THE

MADRAS LAW JOURNAL.

I] JANUARY. [1953

NOTES OF RECENT CASES.

Venkatarama Iyer, J. Nagaratna Mudali *v.* Mayandi Venkatesa Mudali.
7th November, 1952. C. R. P. No. 368 of 1952.

Court-fees Act (VII of 1870), *section* 7 (v) *and Article* 17-B—*Suit by coparcener for partition of joint family properties—Some members of the coparcenary adjudicated insolvents—Official Receiver in possession of the properties—Proper Court-fee payable.*

In a suit for partition of family properties by one branch of the joint family and where certain members of the joint family have been adjudicated insolvent and the Official Receiver as representing their interests was authorised to sell the properties the proper Court-fee payable is under Article 17-B of the Court-fees Act and not under section 7 (v). The effect of the insolvency is not to put an end to the joint possession of the coparceners and whatever the rights of the Official Receiver might be, the coparceners must be deemed to be in possession at least constructively of all the joint family properties.

S. Somasundaram and *N. V. Sundaram* for Petitioner.

S. V. Venugopalachari for Respondent.

R.M.

Govinda Menon and *Basheer Ahmed Sayeed, JJ.* Kalyani Achi *v.* K.N.S.P.R.M. Ramanathan Chettiar.
11th November, 1952. A. A. O. No. 369 of 1952 & C.R.P. 1170 of 1952.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 69—*Sale commencing on a specified date and continuing* De die in diem—*If amounts to adjournment—Leave of Court—When necessary—Selling Officer—Agent or delegate of Court—Powers of.*

If an execution sale commenced on a specified date is continued from day to day, it is not a case of an adjourned sale and the sale might be continued for any length of time if the circumstances of the case warrant it. A continuance of a sale is not tantamount to any adjournment.

But where the sale warrant contains a positive direction that the same should be returned on or before a particular date, the selling officer becomes *functus officio* on the expiry of that date and his power to sell gets terminated by efflux of time. Any sale after the expiry of the time fixed for return of warrant is without jurisdiction and there can be no question of any implied extension of time.

A selling officer is not an agent of the Court and he is at best a delegate of the Court. Any action of a delegated authority in excess of such authority is illegal and *ultra vires* and such acts cannot be ratified subsequently by the Court.

R. Gopalaswami Iyengar for Appellant.

A. Sundaram Aiyar for Respondent.

R.M.

Satyanarayana Rao, J. Natesa Sastriar *v.* Sundaram Chettiar.
24th November, 1952. S. A. No. 614 of 1948.

Civil Procedure Code (*V of* 1908), *section* 47—*Decree—Execution—Property vesting in legatees subsequent to attachment—Right of decree-holder to proceed with the execution—Right of suit—When available.*

The rights of an attaching creditor have to be determined as on the date of attachment. The fact that subsequently the property attached has vested under a will upon other persons is of no consequence. Such properties can be validly seized in execution of the decree and the decree-holder need not file a regular suit to enforce his rights.

An heir-at-law though a legal representative within the meaning of section 2 (11), Civil Procedure Code, a decree-holder cannot proceed in execution against the properties of the deceased in the hands of legatees under a will but his claim can be enforced by a suit.

Quaere :—Whether a legatee under a will who helps himself by taking possession of the estate of the deceased in satisfaction of his own legacy is an executor *de son tort* within the meaning of section 303 of the Succession Act? (*vide* illustration to that section).

(1950) 1 M.L.J. 476, doubted.

G. R. Jagadisan for Appellants.

T. R. Srinivasan for Respondents.

R.M.

Rajagopalan, J. Sri Ramulu Naidu *v.* Jambulingam Pillai.
25th November, 1952. A. A. O. No. 299 of 1951.

Limitation Act (*IX of* 1908), *Article* 83—*Applicability—Subsequent mortgagee undertaking to discharge prior mortgage—Failure to—Prior mortgagee bringing the property to sale in execution of the mortgage decree obtained by him—Suit by mortgagor against subsequent mortgagee for damages for breach of covenant undertaking to redeem the prior mortgage—Limitation.*

Where a subsequent mortgagee undertook to discharge a prior encumbrance on a property of the plaintiff but failed to do so as a result of which the property was sold by the prior mortgagee and the plaintiff filed a suit for damages;

Held, that Article 83 of the Limitation Act applies to such cases and the period should be computed from the date on which the sale was confirmed, thus finally extinguishing the right of the plaintiff, as well as the defendant to redeem the mortgage. The damage sustained by the plaintiff was on the final extinction of the right to redeem the mortgage and the extinction is on the date of the confirmation of the sale.

A. Balasubramania Aiyar for Appellant.

K. V. Srinivasa Aiyar for Respondent.

R.M.

Govinda Menon and *Basheer Ahmed Sayeed, JJ.* N.H.M.Pandian, *In re.*
12th December, 1952. Crl. R. C. No. 102 of 1951.
(Cr. R. P. No. 101 of 1951).

Indian Penal Code (*XLV of* 1860), *section* 406—*Dedication of lands to temple—Dedication ceasing to be in force—Spending the income from such lands by successor in interest—If amounts to criminal breach of trust—Dedication—What amounts to.*

A dedication of lands to a temple by a Zamindarini, who is only a limited owner, cannot enure beyond her life-time under section 4 of the Madras Impartible Estates Act II of 1904. The mere fact that the income has been reared even after her life-time as trust property cannot amount to a dedication in favour of the temple. Wrong admissions in ignorance of legal rights have no force. Where the successor in interest spends the income there could be no conviction on a charge of criminal breach of trust as the dedication of the corpus itself is no longer in force.

K. S. Jayarama Iyer and *C. K. Venkatanarasimham* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for State.

R.M.

Raghava Rao, J.
17th September, 1952.

Mangamma *v.* Govindappa.
S.A. No. 2466 of 1948.

Code of Civil Procedure (Act V of 1908), *Order* 41, *rule* 27—*Appellate Court appointing a second Commissioner to supplement the evidence before the trial Court—Regularity—Section* 107 (2) *and Order* 26, *rule* 9, *Civil Procedure Code, if applicable—Power of appellate Court to appoint a Commissioner.*

The procedure of appointing a second Commissioner at the appellate stage to make an inquiry and submit a report in order to supplement the evidence and to supply a omission before the trial Court, is irregular and is in violation of Order 41, rule 27 of the Civil Procedure Code. It cannot be construed either that the lower appellate Court acted within its powers under Order 26, rule 9, read with section 107 (2) of the Code of Civil Procedure.

Ramachandra Rao for Appellant.

Partha arathy for Respondent.

R.M.

Chandra Reddi, J.
27th October, 1952.

Muthiah Mudali *v.* Munuswami Chettiar (dead) and others
S.A. No. 2622 of 1948.

Contract—Agreement for sale of land—Specific Performance of—If completed contract or only an offer which could become a contract by acceptance.

Trust Act (II of 1 82), *section* 94—*Applicability—Limitation.*

An agreement of sale under which the promisor agreed to sell certain lands to the promisee at any time the promisee paid the sale-price is not an executory contract capable of being specifically enforced but is only an offer which could become a contract only by acceptance of that by payment of the price.

But where the whole beneficial interest in the property is not in the promisor and the promisor has admitted that the property was purchased by him only for the benefit of and at the request of the promisee, the suit could be viewed as one for recovering possession of the properties under section 94 of the Indian Trusts Act. The only right of the promisor was to get back the price advanced by him for the purchase of the property for the benefit of the promisee.

In such a case there being no express trust section 10 of the Limitation Act has no application and the residuary article is to be applied.

K. Rajah Iyer for Appellant.

K. S. Desikan for Respondent.

R.M.

Venkatarama Ayyar, J.
7th November, 1952.

Anathalayan *v.* Marudamuthu.
C.R.P. No. 1427 of 1949.

Civil Procedure Code—Order 9, *rule* 13—*Proviso—(Madras Amendment)—Irregularity in service of summons—If cured—Order* 5, *rule* 17—*Provisions, if mandatory.*

The failure to take an acknowledgment or to affix the summons as contemplated under Order 5, rule 17, Civil Procedure Code, is cured by the proviso to Order 9, rule 13, Civil Procedure Code, enacted in Madras, though the provisions of Order 5, rule 17, may be mandatory. The proviso is intended to apply to all cases in which there has been a failure to observe the provisions as to service of summons under Order 5. If it be proved that the defendant had sufficient notice it will only be an irregularity such as will be cured by the proviso.

C. A. Seshagiri Sastri for Petitioner.

R. Desikan for Respondent.

R.M.

NRC

Panchapagesa Ayyar, J. Papamma, *In re.*
14th November, 1952. Crl. Rev. Nos. 1078 to 1090 of 1952.
(Cas. Ref. Nos. 54 to 66 of 1952.)

Madras Prohibition Act (X of 1937)*—Offences under—Practice and Procedure—Section* 562 (1), *Criminal Procedure Code (V of* 1898), *if could be applied—First Offenders—Speculative presumption—Propriety.*

Every court must award the sentence suited to the offence and the offender and not make the sentence smaller because of any doubt regarding the *commission of the offence itself.*

Except under exceptional circumstances to apply section 562 (1), Criminal Procedure Code, to all first offences of drunkenness is neither the intention of the law, nor will it be consistent with common sense. In all such cases the antecedents of the offenders and the circumstances of the offence must be considered *individually.*

It is no part of a court's function to speculate on undetected offences. To presume on no evidence, that a man committing an offence must have committed several offences before which went undetected is not proper.

It is not proper to say that the spread of drink to classes not addicted to it before is to be treated more indulgently than the continuance of drink among the classes addicted to it before. Nor should offenders be left off on the ground of their backwardness.

Public Prosecutor (*V. T. Rangaswami Ayyangar* for State).

R.M.

Ramaswami, J. Annamalai, *In re.*
21st November, 1952. Cr. App. Nos. 92 and 93 of 1951.

Madras Maintenance of Public Order Act, 1949 *(Act XXIII of* 1949)*—If a special law—Special and local laws—Distinction—Madras Act (XXIII of* 1949)*—If creates fresh offences—Escape from police custody—When an offence—Arrest without authority or under improper or invalid authority—Resistance to arrest—If offence.*

The word ' offence ' means a thing punishable under the Penal Code or any special or local law. The special law contemplated are laws such as those that create fresh offences; *i.e.*, laws making punishable certain things which are not already punishable under the Penal Code. But other Acts are those that create no fresh offences but merely provide a supplementary or alternative punishment of offences already primarily punishable under the Penal Code or which can be dealt with under the preventive or reformative provisions of the Code of Criminal Procedure.

The Madras Act I of 1947 (now Act XXIII of 1949) is not a special law. It can be considered a local law applicable to the State of Madras. A local law does not necessarily include all the rules made under the provisions of a local law. Where a local law declares a breach of the rules made under its authority to be punishable, then a breach of such rules might constitute an offence within the meaning of section 40 of the Penal Code.

A person cannot be convicted of escape unless the custody in which he was detained was lawful. A person about to be arrested is entitled to know under what power the constable is arresting him and if he specifies certain power which the person knows the constable has not got, he is entitled to object to such arrest and escape from custody, such custody not being a lawful one.

A detention and a rescue by others and the escape by the detinue will attract the application of section 225-B, Indian Penal Code, provided the detention was lawful.

Assistant Public Prosecutor (*A. C. Muthanna*) for Appellant.

A. Ramachandran for *Messrs. Row* and *Reddy* for Respondent.

R.M.

Venkatarama Ayyar, J.
10th October, 1952.

Kalavagunta Rama Rao *v.* Kalavagunta Narayanamurthi and others.
S.A. No. 2206 of 1948.

Madras Co-operative Societies Act (*VI of* 1932), *section* 25—*Registrar of Co-operative Societies—If a Civil Court.*

In order to decide whether an authority constituted under a special statute is an administrative body or a tribunal discharging the functions of a judicial character of a Court it is necessary to look into the nature of the powers conferred on the authority by the provisions of the Statute.

The Registrar of Co-operative Societies functioning under the Co-operative Societies Act and the rules made thereunder is a civil Court though the provisions of the Code of Civil Procedure may not apply to it.

Case-law reviewed.

(1949) 1 M.L.J. 107, followed, (1949) 2 M.L.J. 682, distinguished.

Ch. Ramakrishna Rao for Appellant.

B. V. Ramanarasu for Respondent.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J. and
Venkatarama Ayyar, J.
16th October, 1952.

Kotiah *v.* Raghavulu.
Appeal No. 570 of 1948.

Contract—Specific performance—Vendor's title defective at the time of the contract becoming perfect after the contract—Right of vendor to sue for specific performance.

It is true that a person who has entered into a contract to sell a property as his property cannot compel the purchaser to accept a conveyance of that property from a stranger. But where the vendor has been able to make good his title before the close of the action, he can sue the purchaser for specific performance of the contract even though at the time of the agreement he (the vendor) had no legal or equitable title to it and his title was in any way defective.

It is open to the purchaser if he thought fit, to have declined the contract as soon as he discovered that the plaintiff had no title; but if he does not do so it was sufficient that at the hearing a good title could be made by the vendor.

Wynn v. *Morgan*, 32 E.R. 82, *Eyston* v. *Simonds*, 62 E.R. 1038, *Salisbury* v. *Hatcher*, 63 E.R. 24, *Hoggart* v. *Scott*, 30 E.R. 113, cited, A.I.R. 1937 Mad. 869, foll.

M. S. Ramachandra Rao and *M. Krishna Rao* for Appellants.

D. Munikanniah and *A. V. Subbiah* for Respondent.

R.M. ——— *Appeal allowed.*

Chandra Reddy, J.
29th October, 1952.

Periasami Gounder *v.* Vellama Naicker.
S.A. No. 2061 of 1948.

Madras Estates Land Act (*I of* 1908)—*Section* 107—*Scope of—Limitation for suit to set aside a sale.*

If a junior member of a Hindu joint family happens to be an officer or subordinate officer holding a Revenue sale under the Madras Estates Land Act for recovery of arrears of rent due to landlord and the manager of the joint family purchases the interest sold at the sale, the sale is hit by the provisions of section 107 of the Madras Estates Land Act. It is only voidable, and is valid until set aside. To a suit to set aside the sale Article 12 of the Limitation Act applies.

Case-law discussed.

K. S. Ramamurthi and *V. Seshadri* for Appellant.

V. C. Viraraghavan for Respondent.

R.M. ———

Raghava Rao, J.
30*th October*, 1952.

The Commissioner, Hindu Religious and Charitable Endowments Board *v.* Gangamma and another.
A.A.O. No. 425 of 1949.

Madras Hindu Religious Endowments Act (*II of* 1927), *section* 9 (12)—*Private institution—When becomes a public temple—Tests.*

A dedication of a private shrine to the public ought not to be readily inferred but its historical background must, when a question of dedication has to be decided, be taken into account.

Seshachalapathi for Appellant.

Kondayya for Respondent.

R.M.

Chandra Reddy, J.
31*st October*, 1952.

Yelliah *v.* Yella Reddi.
S.A. No. 3 of 1948.

Evidence Act (*I of* 1872), *section* 112—*Presumption of legitimacy—Rebuttable—'Access'—Meaning of.*

An 'access' within the meaning of section 112 of the Evidence Act means no more than an opportunity for intercourse at any time when a child could have been begotten. The presumption under section 112 of the Act about the legitimacy of a child is only a rebuttable presumption and the contra can be proved by the person contesting the legitimacy of a child like any other fact under the Evidence Act.

R. Venkatasubba Rao for Appellant.

T. Satyanarayana for Respondent.

R.M.

Chandra Reddy, J.
3*rd November*, 1952.

Anganna Thevan *v.* Ayyasami Thevan.
S.A. No. 1910 of 1948.

Hindu Law—Alienation by mother—Son's debts—Renewal of a time-barred debt—Whether binding on reversioner.

A mother succeeding to the estate of her deceased son is not competent to alienate the property in order to discharge a time-barred debt of her son.

I.L.R. 1926 All. 20 and I.L.R. 43 All. 604 followed.

I.L.R. 16 Pat. 45 doubted.

P. S. Balakrishna Ayyar and *P. S. Ramachandran* for Appellant.

A. Balasubramaniam and *V. S. Mayilerumperumal* for First Respondent.

R.M.

Satyanarayana Rao, J.
4*th November*, 1952.

Narasimhalu *v.* Pappayya.
S.A. No. 2285 of 1948.

Madras Estates Land Act (*I of* 1908)—*Sections* 112 *and* 117—*Provisions mandatory—Failure to conform to the provisions—Effect of on sale.*

The provisions of the Madras Estates Land Act relating to the conduct of sales must be strictly construed whether it is notice under section 112 or notice under section 117 or fixation of the date of sale. These provisions are mandatory and cannot be lightly ignored.

When a selling officer did not conform to these requirements the sale is void and a nullity and not merely voidable and hence Article 12 (*b*) of the Limitation Act cannot apply.

(1940) 1 M.L.J. 20 followed.

(1950) 1 M.L.J. 43 dissented from.

E. Venkatesan for Appellant.

B. V. Subramaniam and the Government Pleader (*P. Satyanarayana Raju*) for Respondents.

R.M. *Appeal dismissed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
6*th November*, 1952.

Ayisha Bibi *v.* Sadhakathulla Maracair.
S.A. No. 2063 of 1952.

Mahomedan Law—One co-sharer—If represents other co-sharers.

It is the essence of Islamic Law that a Muslim heir, who becomes a co-sharer does not represent the other co-sharers ; and, if he is in management of the properties belonging to all the co-sharers of whom he happens also to be one the other co-sharers will be entitled to ask for an account of the profits and the relationship between him and the other co-sharers does not become altered by the mere fact that he takes up the management of the estate left by his father.

K. S. Desikan and *K. Raman* for Appellant.

K. Srinivasan for Respondent.

R.M. *Decree modified.*

Rajamannar, C.J. and Venkatarama Ayyar, J.
7*th November*, 1952.

Venkata Chellamma *v.* Subba Rao.
L.P.A. No. 122 of 1950.

Hindu Law—Dancing girls—Adoption of daughter—Custom—Validity and effect.

So far as Madras is concerned an adoption of a daughter by a dancing girl, where it is not for the purpose of prostitution, is valid by custom and such adoption confers on the person adopted the status of an adopted daughter with all the civil rights flowing therefrom like inheritance to the adoptive mother's properties.

Case-law reviewed.

M. S. Ramachandra Rao and *Ch. Ramakrishna Rao* for Appellant.

J. V. Srinivasa Rao for Respondent.

R.M.

Subba Rao and Ramaswami, JJ.
11*th November*, 1952.

Narayana Dossji Varu *v.* Thirumalai Tirupathi Devasthanam Committee.
Appeal No. 651 of 1948.

Civil Procedure Code (VI of 1908), *section* 11—Res judicata—*Might and ought—Waiver of.*

The plea of *res judicata* is not one of jurisdiction of the Court but is one which a party may waive.

If a matter could have been set up as a ground of attack or defence in a former suit and if its introduction into that suit was necessary for a complete and final decision of the right claimed by the plaintiff therein, it will be deemed to be a matter which ought to have been made a ground of attack or defence in that suit, unless the matters in that suit and the subsequent suit are so dissimilar that their union might lead to confusion.

V. M. Ramaswami Mudaliar for Appellant.

K. Sundararajulu Naidu and *P. Rajeswaran* for Respondent.

R.M. *Appeal dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J.
17*th November*, 1952.

Appanna *v.* Venkatapadu.
Appeal No. 115 of 1949.

Limitation Act (IX of 1908), *Articles* 91 *and* 144—*Applicability—Suit to set aside a document which is void and inoperative.*

Article 91 of the Limitation Act has no application where the instrument sought to be cancelled is void and inoperative as the article presupposes that a suit is necessary under the law to set aside the instrument. In the case of an invalid instrument which is void there is no need to move the Court to set it aside and only voidable instruments require a decree of Court to set it aside. To such a suit the period of limitation applicable is under Article 144 and not Article 91. If in such a suit there is a prayer for cancellation of the instrument it can only be regarded as ancillary to the substantive prayer for possession and can be treated as a surplusage.

Case-law reviewed.

When a deed of one character is executed on a representation that it is of a different character then it is wholly void and inoperative. Such a deed does not require to be set aside under Article 91 and a suit to recover possession of the properties comprised therein would be governed by Articles 142 and 144 of the Limitation Act.

C. V. Dikshitulu and *N. Rajeswara Rao* for Appellants.

B. V. Subramaniam for 1st Respondent.

R.M. ——— *Appeal allowed.*

Chandra Reddi, J. Rama Krishna Raju *v.* Someswara Rao.
21st November, 1952. W.P. No. 408 of 1952.

Madras Village Panchayat Act (*X of* 1950), *section* 19—*Applicability.*

Section 19 of the Madras Village Panchayat Act (X of 1950) comes into play only when there is disqualification under sections 13, 15, 16 or 17 of the Act. The jurisdiction conferred by section 19 on the prescribed judicial authority is restricted to cases arising under the four sections mentioned therein.

Whether the procedure laid down in section 19 is retrospective—left open.

R. Bhimasankaram and *T. Narayanachari* for Appellant.

The Government Pleader (*P. Satyanarayana Raju, E. Venkatesan, V. V. Raghavan* and *Ramachandra Raju*) for Respondents.

R.M. ——— *Petition allowed.*

Satyanarayana Rao and Rajagopalan, JJ. Corporation of Madras *v.*
28th November, 1952. Balakrishna Mehta.
C.C.C.A. Nos. 50 of 1951 and 66 of 1950.

Madras Town Planning Act (*VII of* 1920), *rules* 20 *and* 21—*Betterment contribution—Recovery—Mode of—Distress proceeding—If available to the Corporation after the respective financial year concerned.*

A demand for payment of betterment contribution could be made by the Corporation (or a Municipality) either in the half year in which it became due or in the succeeding half year only for the amount due in respect of the first half-year. There is no right to demand under rule 20 betterment contribution due in respect of any other half year and half years other than one half year in respect of which it became due in that half year.

Hence betterment contribution due in respect of several years cannot be recovered by distraint proceedings after the expiry of the concerned financial year.

R. Rajeswara Rao and *R. Punna Rao* for Appellant in C.C.C. App. No. 66/50.

V. K. John of Messrs. John and Row for respondent in C.C.C. App. 66/50 and Appellant in C.C.C. App. 50 of 1951.

G. Venkatesayya for Respondents in C.C.C. App. No. 50 of 1951.

R.M. ———

Mack, J. Panchalamma *v.* Subramaniah.
5th December, 1952. C.R.P. No. 513 of 1951.

Provincial Small Cause Courts Act (*IX of* 1887), *section* 15 *and schedule II—Suit of a small cause nature—Test.*

A suit by a vendor to recover the purchase money or any balance alleged to be due on a sale of immoveable property falls within the category of a suit for specific performance. Hence it is not of a small cause nature. (1943) 2 M.L.J. 424 (F.B.) relied on.

R. Venkatasubba Rao for Petitioner.

K. Subbaramiah, V. Sreeramulu and *K. Subramanian* for Respondents.

R.M. ——— *Revision allowed.*

Ramaswami, J. Ayya Nadar, *In re.*
9th December, 1952. C.R.P. No. 2228 of 1952.

Civil Procedure Code (*V of* 1908), *section* 11, *Explanation IV*—Res judicata—*Might and ought.*

There can be no doubt that the plea of ' might and ought ' cannot be extended to the extent of compelling a litigant to set up incongruous pleas in order to exhaust all the possible permutations and combinations of attacks or defences which might be evolved. If a matter could have been set up as a ground of attack or defence in a former suit *and if* its introduction into that suit was *necessary* for a complete and final decision of the right claimed by the plaintiff therein, it will be deemed to be a matter which *ought* to have been made a ground of attack or defence in that suit. It cannot be said of any matter that it *ought* to have been set up as a ground in a former suit, if its introduction would have been *incongruous* to the matter of that suit.

P. S. Chandrasekara Ayyar and *P. S. Ramachandran* for Petitioner.

R.M. *Petition dismissed.*

Subba Rao, J. Thirugnanasambandam Pillai *v.* Ramachandran Pillai.
10th December, 1952. S.A. No. 510 of 1949.

Civil Procedure Code (*V of* 1908), *section* 92—*Suit by Managing Trustee against other trustees for accounts—Sanction of Advocate-General—Necessity.*

A suit by one Managing Trustee for rendition of accounts against the other trustees during the period of his term would be maintainable without the sanction of the Advocate-General.

S. Sitarama Aiyar and *S. Rajaraman* for Appellant.

K. Venkataramani for Respondent.

R.M. *Appeal allowed.*

Ramaswami, J. Narayanamurthi Amma, *In re.*
10th December, 1952. C.R.P. No. 2074 of 1952.

Inam—Swasthivachakam Service Inam—Nature of —Alienability.

A Swasthivachakam Service Inam is inalienable and an agreement to sell such an inam, which is invalid, cannot be rendered any more valid by disguising it as a long term lease or a mortgage for an extended period. The purchaser of a Swasthivachakam Inam runs the double risk of the Collector resuming the land and regranting it and the successor in office of the service to be performed or the general body of worshippers stepping in to avert such a resumption by getting the alienation declared void and recovering possession, profits and costs.

(1922) I.L.R. 45 Mad. 620 : 42 M.L.J. 477, followed and case-law discussed.
C. V. Dikshitulu for Petitioner.

R.M.

Govinda Menon, J. Doraiswami Nadar *v.* Nataraja Nadar.
12th December, 1952. C.R.P. Nos. 1255 and 1256 of 1952.

Civil Procedure Code (*V of* 1908), *Order* 6, *rule* 17—*Amendment of plaint—When permissible.*

An amendment of a plaint by adding a prayer to the effect that a plaintiff sues not only on his own behalf but also on behalf of the entire body of creditors of the defendant can be allowed. (1943) 2 M.L.J. 1, followed. I.L.R. (1940) Mad. 808 : (1940) 1 M.L.J. 872, distinguished.

D. Ramaswami Aiyangar and *P. R. Varadarajan* for Petitioners.
C. S. Swaminathan for Respondents.

R.M. *Petition allowed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Sinambu, *In re*:
12th December, 1952. Crl. Appeal No. 416 of 1952.

Criminal Trial—Criminal Rules of Practice, Rule 85—Confession of accused—Failure to warn—Admissibility in evidence—Practice—Warning—When compulsory.

As a general rule of practice where there are more than one person charged with a crime and one of such persons wants to make a confession statement, it is the duty of the magistrate to specifically warn the person making the confession that it was not intended to take him or her as an approver. But where it is quite clear from the circumstances that only one person is involved in the crime and such a person wants to confess, the failure to warn the person regarding the fact that it was not intended to take him as an approver would not amount to a serious irregularity.

B. Prasada Rao for Appellant.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) for the State.

R.M. *Sentence modified.*

Chandra Reddy, J. Narayanan *v.* Central Road Traffic Board.
15th December, 1952. W.P. No. 744 of 1952.

Motor Vehicles Act (IV of 1939)—Central Road Traffic Board—Powers of remand.

The Central Road Traffic Board's powers in the matter of remand are untrammelled by any of the provisions of the Civil Procedure Code and they can limit the scope of the order of remand.

K. Rajah Ayyar and *B. Manawala Chowdry* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*), *N. V. B. Sankara Rao* and *Punyakoti Chettiar* for Respondent.

R.M. *Petition dismissed.*

Mack, J. Danapal Chetty *v.* Rajagopal Chetty.
17th December, 1952. A. A. O. Nos. 195 and 196 of 1949.

Suits Valuation Act (VII of 1887), section 11—Scope and effect—Objection to pecuniary jurisdiction taken for first time on appeal—If appellate Court can return plaint for presentation to proper Court.

An appellate Court cannot direct a plaint to be returned to the party for presentation to the Court having jurisdiction when no objection to jurisdiction had been taken during the trial and when lack of jurisdiction was found to result from a mere under-valuation in the plaint. Under proviso B to section 11 of the Suits Valuation Act, this course can only be adopted when the under-valuation or over-valuation has, in the opinion of the appellate Court, prejudicially affected the disposal of the suit on its merits. Where objection to jurisdiction on the ground of under-valuation was not taken in the trial Court the appellate Court cannot return the plaint but has to hear the appeal on its merits and dispose of it according to law.

M. Natesan for Appellant.

V. Somasundaram and the Government Pleader (*P. Satyanarayana Raju*) for Respondents.

Order of remand set aside.
K.S. *Leave to appeal refused.*

[F.B.]
Satyanarayana Rao, Subba Rao and Ramaswami, JJ.
5th November, 1952.

The Juma Masjid, Marcara *v.* Deviah.
Appeal No. 852 of 1948.

Transfer of Property Act (IV of 1882), *section* 43—*Scope of—If applies to cases of alienation prohibited by section* 6 (a) *of the Act—Conditions to attract section* 43 *to transfers.*

Where a transferor in fact purports to transfer an expectancy or property which he had no right to transfer without making any representation that he had authority to transfer, then section 43 of the Transfer of Property Act will not help the transferee. Similarly, if both the transferor and transferee knew the truth, the section cannot be invoked by the transferee. Section 43 proceeds on the fundamental assumption that an erroneous or fraudulent representation by a transferor induced the transferee to part with the consideration without knowing the true facts and therefore such a transferee should be allowed to claim from the transferor; if he subsequently acquires any title to the property, that the transfer should operate on that title.

A transfer which was made on an erroneous representation may, in fact and in effect, be a transfer of an expectancy, which is prohibited by the Statute. That does not prevent section 43 from operating in such cases. 65 M.L.J. 588, overruled. 29 M.L.J. 733, approved.

Per Subba Rao, J.—The mere fact that the subject-matter of the transfer is untransferable by reason of some statutory restriction or principles of public policy cannot take the case out of the operation of section 43, Transfer of Property Act. The want of title or a prohibition against transfer in a property affects the title purported to be conveyed. In either case, the transferee does not acquire title but that does not affect the competency of the transferor. The case of a transfer by a person legally competent to transfer is different from the case of a person not legally competent to transfer. In the former case the transferor is bound to make good his representation and in the latter his representation itself cannot bind him as he has no legal competency. If this distinction is borne in mind it is possible to reconcile the provision of section 43 and section 6 (*a*) of the Transfer of Property Act.

T. Krishna Rao for Appellant.

K. Rajah Aiyar and *V. Seshadri* for Respondents.

R.M. ——— *Appeal dismissed.*

Rajagopalan, J.
18th November, 1952.

Kesava Rao *v.* Subbayya.
S. A. Nos. 2092 and 2093 of 1948.

Contract—Principal and agent—Agent receiving money of principal—Liability to pay interest—When arises.

An agent is not generally liable to pay interest upon money received by him for the use of his principal except where he refused to pay it over to the principal on demand.

When a defendant as an agent of the plaintiff improperly withheld accounts from the plaintiff it should suffice to make the defendant liable for interest from the date of demand for accounts and payment by the plaintiff.

P. Somasundaram and *A. Sambasiva Rao* for Appellants.

N. V. B. Sankara Rao and *K. Rayanna* for Respondents.

R.M. ——— *Appeal dismissed.—Leave granted.*

Rajamannar, C.J. and Venkatarama Aiyar, J.
18th November, 1952.

Annapurnamma *v.* Collector of Vishakapatnam.
Appeal Nos. 34, 35 and 36 of 1949.

Civil Procedure Code (V of 1908), *section* 92—*Scope.*

It is not necessary that a suit for administration should always precede a suit under section 92 of the Civil Procedure Code.

NRC

I.L.R. 46 Mad. 300, followed. 16 L.W. 922, considered.

P. Somasundaram for Appellant.

The Government Pleader (*P. Satyanarayana Raju*) and *V. Balakrishna Eradi* for Respondent.

K.M. —— *Scheme modified. Appeal dismissed.*

Subba Rao and Ramaswami, JJ. Danalakshmi Ammal *v.* Pichchayya Naidu.
25th November, 1952. Appeal No. 203 of 1949.

Deed—Construction of—Power to adopt with words of bequest—Nature of—When a will.

A document is a will if it contains specific words of bequest to come into effect after the death of the testator. If there are specific words of devise it is not permissible to ignore them. It may be in some cases that the alleged words of devise are ambiguous and are consistent with a narrative and a declaration of the consequences of adoption. In such cases, having regard to the context, a Court may hold that the document only conferred a power of authority to the widow and the ambiguous words of devise are only a statement of the legal consequences of an adoption. For the purpose of construction of a document the validity of the will or its clauses must be ignored.

V. Sundaresan for Appellant.

S. V. Rama Aiyangar for Respondent.

R.M. ——

Satyanarayana Rao, J. Pavanasam Chettiar *v.* Palavesam Chettiar.
27th November, 1952. S.A. No. 23 of 1949.

Hindu Law—Adoption—Proof of—Tests.

In cases of ancient adoption one has to rely upon the course of conduct of the parties rather than on any amount of oral evidence. 53 M.L.J. 858 (P.C.), followed. The fact that the adopted son is excluded from a share in the properties of his natural family at the time of the partition is a very strong circumstance. Dearth of evidence should not be allowed to tell against the truth of an adoption, several decades old where there is practically a consistent course of conduct which is consistent only with the fact of an adoption.

S. Rajagopalachari for Appellant.

S. Ramachandra Ayyar for Respondent.

R.M. —— *Appeal allowed.*

Satyanarayana Rao, J. Appaswami Reddiar *v.* Krishna Reddiar.
4th December, 1952. S.A. No. 599 of 1949.

Hindu Law—Joint family—Partition—Purchasers of certain shares—Rights—Common well—Right to use the water.

Where a well is excavated on an ancestral land as a source of irrigation to particular lands, after partition of the lands, as incident to the ownership of the lands, the right to the use of the well also is vested in the various sharers. Whether the sales by these sharers are effected with or without reference to the right in the well, the right to take water from the well, which is attached as incident to that property, will pass to the purchaser.

M. S. Venkatarama Aiyar for Appellant.

S. Thyagaraja Aiyar for 1st Respondent.

R.M. —— *Appeal allowed.*

Rajamannar, C.J. and Venkatarama Aiyar, J. Komti Achan *v.* Velayudhan.
5th December, 1952. Appeal No. 180 of 1949.

Trusts Act (II of 1882), *section* 90—*Applicability.*

A purchase by a mortgagee based on a breach of obligation by him must in equity enure for the benefit of the mortgagors and it makes no difference in the enforcement of this equity that the mortgagor is also a party to the decree under

which the sale is held. If there is a deliberate breach of obligation contained in the deed resulting in the sale of the properties and the purchase is made by the defaulting mortgagee the equity under section 90 of the Trusts Act will fasten upon the property in his hands.

Case-law reviewed.

D. A. Krishna Variar and *A. Vasudeva Menon* for Appellants.

N. Sundara Aiyar for 1st Respondent.

R.M. *Appeal allowed.*

Chandra Reddi, J. Sri Meenambigai Motor Service *v.* State of Madras.
10*th December*, 1952. Writ Petition No. 687 of 1952.

Motor Vehicles Act (IV of 1939), *section* 64-*A—Government exercising revisional jurisdiction—Necessity to hear parties.*

The only obligation cast upon the Tribunals exercising statutory functions and acting in a *quasi-judicial capacity* is to give an opportunity to the parties to present their cases before a final decision is reached by the authorities concerned. It is not necessary for administrative bodies, though acting in a *quasi-judicial capacity*, to hear the parties in person.

Messrs. John and Row for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*), *T. Chengalvarayan, N. Rajagopala Aiyangar* and *K. Thirumalai* for Respondents.

R.M. *Petition dismissed*

Ramaswami, J. Muthyala Lakshminarayana, *In re.*
10*th December*, 1952. S.A. No. 2384 of 1952.

Madras Estates Land Act (I of 1908)—*Sub-tenant—When can acquire right of occupancy.*

Unlike the Bengal Tenancy Act, the Madras Estates Land Act does not recognise the acquisition of occupancy right by sub-lessee tenants. But a sub-lessee or sub-tenant from a ryot can by custom or usage acquire occupancy right.

Y. Suryanarayana for Appellant.

R.M. *Appeal not admitted.*

Ramaswami, J. Moosakutty, *In re.*
16*th December*, 1952. C.R.P. No. 2363 of 1952.

Civil Procedure Code (V of 1908), *Order* 26, *rules* 9 *and* 18—*Commissioner—Appointment of—Notice to other side if compulsory before appointment.*

There is no provision under Order 26, rule 9, Civil Procedure Code, that a commission could be issued only after notice has been issued to the defendant and rule 18 cannot mean that notice to the parties is necessary before issuing a commission. 40 L.W. 358, dissented from.

The Commissioner's report in such cases though it is undoubtedly part of the records in the case, does not automatically become evidence and the parties are entitled to object to the Commissioner's report and prove their objections by examining the Commissioner or other witnesses.

K. P. Ramakrishna Aiyar for Petitioner.

R.M. *Revision not admitted.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Loomchand Sait *v.* The Official Liquidators, Peerdhan Joharmall Bank, Ltd.
17*th December*, 1952. O.S.A. No. 88 of 1951.

Companies Act (VII of 1913), *section* 282 *(A) and section* 179 *(A)—Sanction of Court to institute proceedings against defaulting Director by Official Liquidators—When necessary—Constitution of India, Article* 20 (2)—*If violated.*

Banking Companies Act (X of 1949), *section* 45-*C and section* 45-*G—Powers of Court.*

It is not necessary that previous sanction of Court should be obtained by the Official Liquidators for instituting criminal proceedings against a defaulting mana-

ging director. In the absence of specific terms that sanction should be previously obtained, it follows, as a necessary corollary, that the sanction required by the Official Liquidators could be given by the Court at any time, even after the proceedings have actually been instituted or even in the course of the proceedings.

Non-compliance with formal requirements in the matter of the description of the applicants cannot and will not amount to any violation of section 177 of the Companies Act, where there is substantial compliance with its provisions.

Section 282-A of the Companies Act does not offend against Article 20 (2) of the Constitution of India.

Failure to frame rules under section 45-G of the Banking Companies Act does not vitiate any proceedings taken under the Act as per the Original Side Rules or the Companies Act and the rules framed thereunder.

Under section 45-C of the Banking Companies Act the High Court is the proper and competent Court and not the Presidency Magistrate's Court to try offences under the Act even though the trial is in a summary way.

The Judge dealing with the proceedings for the winding up of the Banking Company is also competent to try any offence against the defaulting director.

D. Suryaprakasa Rao and *T. K. Raman Nambisan* for Appellant.

A. Balasubramanian for Respondent.

R.M. ——— *Appeal dismissed.*

Mack, J. Pethayya Pillai *v.* Karuppiah Nadar.
17th December, 1952. A.A.O. No. 571 of 1949.

Oaths Act (X of 1873), section 8—Oaths of extraordinary kind—Validity.

Section 8 of the Oaths Act specifically requires that the oath should be one not purporting to affect any third person. Extraordinary oaths, taken on challenge, like taking an oath on the head of the person's son, is contrary to section 8 and is not valid or binding.

A.I.R. 1925 All. 604 and I.L.R. 18 All. 46, referred to. (1938) 1 M.L.J. 368, distinguished.

S. V. Venugopalachari and S. Venkatesan for Appellant.

C. K. Viswanatha Aiyar and *Messrs. Sundararajan* and *Sivaswami* for Respondents.

R.M. ———

Krishnaswami Nayudu, J. Ramalingamma *v.* Venkatasubbayya.
17th December, 1952. A.A.O. No. 434 of 1949.

Madras Hereditary Village Offices Act (III of 1895), section 13 (1) and section 21—Suit for recovery of service inam lands—Jurisdiction of Civil Court—Suit if of civil nature.

The suits contemplated under section 13 of the Madras Hereditary Village Offices Act as being entertainable by the Collector are suits relating to the succession to an office, to hold such office and to enjoy such emoluments. There can be no doubt that emoluments under section 13 include also lands.

Sections 13 and 21 must be read together and the classes of suits that are not cognizable by the civil courts are only those which are mentioned in section 13 (1) and which are to be filed in the Revenue Court.

Case-law reviewed.

B. V. Ramanarasu for Appellant.

Neti Subramanyam and *J. V. Krishna Sarma* for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami, J. Korapalu Heggadthi *v.* Shivarama Hegde.
17th December, 1952. S.A. No. 794 of 1949.

Malabar Law—Ejman or karnavan of a tarwad—Powers of—Grant of mulgani lease—Acts of management or alienation—Tests of validity.

In the absence of necessity the karnavan cannot ordinarily grant a mercharth or renew an old kanom; long in advance of the expiry of the prior term. But such transactions are only voidable and not void. The test prescribed in regard to the act of management is whether the karnavan acted *bona fide* and one test for an act of alienation is whether there was necessity or benefit to the estate. In the former role his powers approximate to that of a trustee or of guardian and in the latter role to that of manager of joint family.

Case-law discussed.

Observations in Justice Sundara Iyer's Treatise on Malabar and Aliyasanthana Law and Mayne's Hindu Law approved.

M. K. Nambiar for Appellant.

S. V. Ramayya Nayak for Respondents.

R.M. ——— *Appeal dismissed.*

Venkatarama Ayyar, J. The District Board, Salem, by its President
17th December, 1952. *v.* Hanumantha Rao.
C.R.P. No. 1081 of 1950.

Madras Local Boards Act (XIV of 1920), *section* 60—*Vesting of public road—If vests the trees standing thereon.*

The vesting of a street in a District Board under the Madras Local Boards Act does not carry with it the ownership of the trees standing thereon, though the Board may have large powers of control over it. It could not be contended that under section 60 of the Act what vests in the local authority is not merely the road-way portion but the lands adjacent thereto and that such lands include the trees standing thereon.

Case-law discussed.

S. Ramachandra Aiyar for Petitioner.

D. Ramaswami Aiyangar and *P. R. Varadarajan* for Respondent.

R.M. ——— *Revision allowed : suit remanded.*

Ramaswami, J. Velur Devasthanam *v.* Muthia Pallavarayar.
5th January, 1953. Crl. Rev. Cas. Nos. 582 and 583 of 1952.

Criminal Procedure Code (V of 1898), *section* 145—*Power of Sub-Divisional Magistrate to drop the proceedings under—Stay by High Court in revision—Scope—Powers in revision.*

Proceedings under section 145, Criminal Procedure Code, can be terminated at any stage when the Magistrate for valid and adequate reasons considers that there is no likelihood of the breach of the peace. . Such reasons must, however, be apparent on the face of the record.

The High Court can set aside an order of the Magistrate if it offends against the elementary rule founded on the desire of the Courts to place the parties to a proceeding on a footing of absolute equality. As a necessary implication to the power of setting aside, the High Court can also order stay before further mischief is effected.

The High Court will however interfere in revision with orders under section 145 and section 146, Criminal Procedure Code, only under exceptional circumstances and that too only when no discretion has been exercised or when that discretion was wrongly exercised.

There must appear on the face of the judgment or of the order complained of or on the record some ground—which need not always be a ground of law—to induce the High Court to think that the evidence ought to be examined in order to see whether there has been miscarriage of justice.

Where a Magistrate drops proceedings he must show reasons *ex facie* and though those orders need not be written elaborately like a judgment still they should follow

the pattern of judgments to enable the revising authority to find out whether the lower Court has applied its mind to the point and came to its conclusion for valid and adequate reasons.

T. S. Kuppuswami Aiyar for Petitioner.

K. Kalyanasundaram for Respondents.

R. Santhanam for the Public Prosecutor (*V. T. Rangaswami Aiyangar*) for the State.

R.M. *Order set aside.*

Ramaswami, J. *In re* Raghunatha Vannian.
8th January, 1953. Crl. Appeal No. 100 of 1951.

Criminal trial—Identification proceedings—Whether evidence—Admissibility—Accused if can demand an identification parade—Evidence Act, section 9.

There is no section in the Evidence Act which makes the identification proceedings evidence at all. But under section 9 of the Evidence Act the evidence of the identification proceedings are facts which establish the identity of the accused persons and are themselves relevant.

There is no provision in the Criminal Procedure Code which entitles an accused to demand that an identification parade should be held at or before the enquiry or at the trial. An identification parade belongs to the stage of investigation by the police. Identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy the investigating officer of the *bona fides* of the prosecution witnesses. The evidence as to identification ought in each case to be subjected to a close and careful scrutiny.

K. S. Naidu for Appellant.

R. Santhanam for Public Prosecutor (*V. T. Rangaswami Aiyangar*) for the State.

R.M.

Raghava Rao, J. Balakrishna Mudaliar *v.* Srinivasalu Chetti.
8th January, 1953. C.R.P. No. 2014 of 1952.

Madras Buildings (Lease and Rent Control) Act, 1949 (*as amended by Act VIII of* 1951), *section* 7 (2) (vi) *proviso—Applicability, section* 12-*B—Revisional powers of High Court—Limits.*

Before the amended provision of the Madras Buildings (Lease and Rent Control) Act could be put into force, it is necessary that the Rent Controller must be moved in express terms by the defaulting tenant to consider the question of his default as not being wilful. It is only then that the Rent Controller could be held to be satisfied or not satisfied as to whether the delay was wilful or was not wilful.

The power which the High Court is called upon to exercise is not an appellate jurisdiction but revisional so that where the tenant has not asked for the indulgence provided for by the statute, the Rent Controller cannot be found to be in error in not holding the default in question to be not wilful. Nor can the Small Cause Court, which later on deals with the matter, be held to be wrong in not entertaining the point, if for the first time sought to be raised before it.

The indulgence created by the amending Act is not a matter of right which could be claimed as a matter of course by the defaulting tenant. It is an indulgence to be exercised in favour of the litigant only on the Rent Controller being satisfied in the manner provided by the amendment of the statute.

Quære :—Whether the terms of section 115, Civil Procedure Code and the terms of section 12-B of Madras Act XXV of 1949 are not *ad idem* and whether the powers under section 12-B are wider than under section 115, Civil Procedure Code ?

V. M. Ramaswami Mudaliar, N. Gopala Menon and *P. K. Janakiram* for Petitioner.

R. Mathrubutham for Respondent.

R.M. *Revision dismissed.*

Govinda Menon, J. Venkateswara Rao *v.* Mohd. Mohibulla Sahib.
9th January, 1953. C.R.P. No. 1495 of 1951.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *sections* 5 *and* 6—*Applicability.*

The provisions of sections 5 and 6 of the Madras Buildings (Lease and Rent Control) Act, 1946 (now Act XXV of 1949) are peremptory and will apply even though the parties have contracted to the contrary. An increase in rent is permissible only under section 6 of the Act and not otherwise, whether or not fair rent is fixed by Court. Any agreement to the contrary is not valid. (*See* now sections 5 and 5-A of the Act). (1948) 1 M.L.J. 51, followed.

I. Vishnu Rao for Petitioner.

Ch. Sankara Sastri for Respondent.

R.M. ——— *Revision allowed.*

Ramaswami, J. Public Prosecutor *v.* Pattu Narasimhalu.
12th January, 1953. Crl. Appeal No. 378 of 1952.

Madras Prevention of Adulteration Act (III of 1918), *section* 5 (*d*)—*Rules—Scope.*

A person who is working in a shop on behalf of the owner as his employee is certainly one who will come within the meaning of " person offering for sale " the article exhibited there.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for the State.

G. Gopalaswami for Accused.

R.M. ——— *Appeal allowed.*

Ramaswami, J. Public Prosecutor *v.* Sari Setty Venkatasubbiah.
12th January, 1953. Crl. Appeal No. 384 of 1952.

Madras General Sales Tax Act (IX of 1939), *section* 15 (b) *and section* 16-A—*Commission agent—If liable to be punished for non-payment of tax.*

The term ' dealer ' will take in a commission agent also in certain cases and he will be an assessee falling within the scope of the Act and non-payment of tax by such a person will entail a punishment under section 15 (*b*) of the Act.

(1952) 1 M.L.J. 494 (F.B.), followed.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for the State.

Accused not represented.

R.M. ——— *Appeal allowed.*

Ramaswami, J. Public Prosecutor *v.* K. V. R. Annamalai Chettiar.
15th January, 1953. Crl. Appeal No. 379 of 1952.

Madras Prevention of Adulteration Act (III of 1918), *section* 6 (3)—*Employee's Acts—When employer could escape conviction.*

Under the Prevention of Adulteration Act, section 6 (3), if a master of a shop has been able to show that he had used due diligence to enforce execution of the Act and what was done was without his knowledge, consent or connivance, he has got to be acquitted.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for Appellant (in person).

N. S. Mani for Respondent.

R.M. ———

Govinda Menon and Basheer Ahmed Sayeed, JJ. Ramanathan *v.* Chinna Nanjunda Goundan.
16th January, 1953. A. A. O. No. 525 of 1952.

Civil Procedure Code (V of 1908), *Order* 21, *rules* 2 *and* 35—*Decree for possession of immoveable property—Satisfaction of decree—How effected—Order of Court recording satisfaction—Necessity.*

When once a decree-holder by means of a certificate in a money decree informs the Court that he has received satisfaction of the amounts due under the decree,

then despite the fact that the Court has not bestowed its thought and put its seal of such satisfaction as being recorded, it will not be permissible to allow the decree-holder later on to execute the decree on the ground that the Court has not recorded satisfaction of the decree.

(1918) M.W.N. 507 and 98 I.C. 698, followed. (1947) 1 M.L.J. 270, distinguished.

Order 21, rule 2, Civil Procedure Code, does not apply to cases where there are other reliefs than the payment of money.

I.L.R. 49 Mad. 716, followed.

There is no provision for recording satisfaction of a decree for delivery of property except under Order 21, rule 35, Civil Procedure Code and that will come into force only where the Court has ordered delivery by a warrant issued to the bailiff and if such a procedure has not been followed it is open to the decree-holder to apply to the Court for putting him in possession of the property.

Case-law discussed.

C. A. Vaidyalingam, G. R. Jagadisan and *A. N. Nanjappa* for Appellant.

T. M. Krishnaswamy Aiyar, K. S. Champakesa Ayyangar, S. Thyagaraja Aiyar and *N. Vanchinathan* for Respondent.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J. and Venkatarama Aiyar, J. 21st January, 1953.

The Vishakapatnam Co-operative Motor Transport, Ltd. *v.* Bangaru Raju. L.P. As. Nos. 6, 52 and 146 of 1952.

Motor Vehicles Act (IV of 1939), section 44 (2)—District Collector ex-officio *president of a co-operative society—Society applying for permit—Membership of R.T.A.—Validity of orders.*

The District Collector of a District is not disqualified from being appointed as a member of the Regional Transport Authority under section 44 (2) of the Motor Vehicles Act merely because he happens to be the *ex-officio* president of a co-operative society, which applied for issue of a bus permit.

One of the great principles of civilized jurisprudence which is a part of the law in Britain and which has been adopted in this country is that no man shall be a Judge in his own cause. Closely allied to this principle is the other salutary principle that it is of fundamental importance that justice should not only be done but manifestly and undoubtedly seem to be done. The combined result of these two well-established principles is that irrespective of the possibility or otherwise of actual partiality being proved, the constitution of a tribunal entrusted with judicial or quasi-judicial functions is deemed to be bad if and when it deals with any case in which it can be said that one of the members of that body is among the suitors or litigants before the body. (Halsbury's Laws of England, 2nd Edn., Vol. IX, p. 883, *et seq.*) A.I.R. 1952 All. 74 and (1953) S.C.J. 31, distinguished.

The Government Pleader (*P. Satyanarayana Raju*) for Appellant in L.P.A. No. 52 of 1952 and Respondent in L.P.A. Nos. 6 and 146 of 1952.

D. V. Reddi Pantulu and *U. Somasundaram* for Appellant in L.P.A. Nos. 6 and 146 of 1952.

The Advocate-General (*V. K. Thiruvenkatachari*), *M. K. Nambiar, C. F. Louis, N. Sundaram Aiyar, D. Narasaraju, K. B. Krishnamoorthy, K. Mangachari, T. K. Rajagopalan* and *S. S. Rajagopalan* for Respondents.

R.M. ——— *Appeals dismissed.*

Subba Rao, J. Sanyasappanna *v.* Appalaswami.
18th November, 1952. A.A.O. No. 122 of 1951.

Madras Agriculturists Relief Act (*IV of* 1938), *section* 9-A (7)—*Scope of.*

To get an exemption under section 9-A (7) of the Madras Agriculturists Relief Act a person should have acquired a title to the equity of redemption by a transfer *inter vivos* from another person who in his turn acquired a right to the same by one of the modes mentioned, namely, succession, survivorship, court-sale, etc. The transaction to be hit by the section should have been a transfer *inter vivos* from the original mortgagor between the two dates mentioned. The clause would not apply if the transfer effected between the dates is from a transferee from the original mortgagor prior to 30th September, 1937.

E. Venkatesam and *E. L. Baghiratha Rao* for Appellant.

C. V. Dikshitulu for Respondent.

R.M.

Mack and Krishnaswami Nayudu, JJ. Venkataramayya *v.* Venkataramappa.
25th November, 1952. Appeal No. 20 of 1949.

Hindu Law—Joint family—Individual business of a member—Gains of—Adequate nucleus—What is.

If a member of a Hindu joint family who was given a certain sum from the joint family funds and who goes out of the family in the sense of leaving the family house and starts a business of his own individually or in partnership and by virtue of his exertions he prospers in his business and acquires properties it will not be justifiable to hold that either the business or his properties would be joint family properties. The trend of judicial opinion has been as far as possible to recognise properties acquired out of the individual exertions of a member of a joint family to be his self-acquisition.

If a member of the family is inclined to start a trade and for that purpose he gets assistance by way of a contribution from the joint family funds without any further assistance from the joint family and goes and starts a business and acquires properties it is reasonable to extend the principle of Hindu Gains of Learning Act (XXX of 1930) to such a case. There is no real distinction between the cases of a member getting himself educated out of the joint family funds and employing himself somewhere earning and acquiring properties and a member getting a cash contribution from the family and starting a trade on his own account. Unless it is shown that the joint family did not stop with the contribution but continued to take interest and the business was subsequently carried on with the assistance of the joint family it should not be held that the business is a family business.

P. Somasundaram for Appellant.

T. S. Narasinga Rao and *M. Balachandrudu* for Respondents.

R.M. *Appeal allowed.*

Rajamannar, C.J. and Suryaprakasa Rao *v.* Venkataraju.
Venkatarama Ayyar, J. Appeal No. 607 of 1949.
18th December, 1952.

Transfer of Property Act (*IV of* 1882), *section* 58 (*c*) *Proviso—Applicability—Sale with an agreement to reconvey—Agreement not embodied in the document of sale—Sale or mortgage by conditional sale—Construction.*

If a Court comes to the conclusion that an ostensible sale taken along with an agreement is not in reality a sale but only a mortgage then it follows that the mortgage is a mortgage by conditional sale. It could not be any other kind of mortgage or even an anomalous mortgage. (1946) 1 M.L.J. 342, followed. A.I.R. 1934 Nag. 18, dissented from. A.I.R. 1931 Bom. 371, considered.

The word ' deemed ' in the proviso has evidently been used because ostensibly the transaction is only a sale. When the condition of reconveyance is embodied in the same document it is open to the Court to hold that what purports to be a sale is really a mortgage. Then it can be said that the sale is ' deemed ' to be a mortgage.

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What the proviso says is that when the condition is not embodied in the same document in no case shall a sale be deemed to be a mortgage.

P. M. Srinivasa Aiyangar for Appellants.

Kasturi Seshagiri Rao and *Kasturi Sivaprasada Rao* for Respondents.

R.M. — *Appeal dismissed.*

Subba Rao, J. Lakshmi Ammal *v.* Thangavel Asari.
5th January, 1953. S.A. No. 531 of 1949.

Hindu Widows' Re-marriage Act (*XV of* 1856), *sections* 2 *and* 5—*Hindu widow—Re-marriage—Forfeiture of husband's property—Scope of.*

A combined reading of sections 2 and 5 of the Act indicates that the forfeiture of the property by a widow on re-marriage is only confined to the category of cases detailed in section 2. Under section 2 she forfeits her rights only in her husband's property which she is entitled to by way of maintenance or by inheritance or by virtue of any will. The interest contemplated by the section is confined or limited to her lifetime. The section will not apply to the absolute interest legally acquired by the widow. (1946) 2 M.L.J. 377, relied on.

K. S. Sankara Ayyar and *V. Sundaresan* for Appellants.

R. Ramamurthi Ayyar for Respondent.

R.M. — *Appeal allowed.*

Govinda Menon and Basheer Ahmed Sayeed, JJ. Annaswami Mudaliar *v.* Ekambari Ammal.
23rd January, 1953. A.A.O. No. 29 of 1952.

Civil Procedure Code (*V of* 1908), *sections* 151 *and* 153—*Court acting under inherent powers—Orders not appealable—Different provision of law also mentioned in the petition additionally—If would make the order appealable—Practice and procedure.*

When a provision of law cannot have any kind of application to a particular proceeding by the mere fact that it is stated in the petition it cannot be said that such a provision will be applicable.

Where the lower Court has invoked the inherent powers vested in it and sets aside an order it is an order passed under section 151, Civil Procedure Code and no appeal lies from such an order to the High Court. The mere fact that in the petition before the lower Court the petitioner has also mentioned Order 23, R. 3, Civil Procedure Code, as applicable to the case, which provision is clearly inapplicable to that case, the order does not become appealable.

A. Sundaram Ayyar for Appellant.

S. Muthiah Mudaliar and *Chockalingam* for Respondent.

R.M. — *Appeal dismissed.*

Subba Rao and Panchapakesa Ayyar, JJ. State of Madras *v.* Srinivasa Ayyangar.
28th January, 1953. S.C. C.M.P. No. 10596 of 1952.

Constitution of India, (1950), *Article* 133—*Leave to appeal to Supreme Court—Subject-matter of small value—Question of law of sufficient and general importance—Practice.*

In cases where the Court thinks that a case is a fit one for consideration by the Supreme Court, but that it would not be right to call upon the respondent whose financial interest in the matter is small to incur the risk of the costs of the appeal, the only course open is to refuse leave and leave the appellant, if so advised, to apply to the Supreme Court. In such cases it is safe to refuse leave, stating that the point in issue appears to be one of general importance but not of sufficient importance to the proposed respondent to warrant the Court in putting him to the expense of an appeal to the highest tribunal. But where the applicant is prepared to be liable for the costs of the respondent in any event, leave may be granted.

The Government Pleader (*P. Satyanarayana Raju*) for Petitioner.

R. Kesava Ayyangar and *K. Parasaran* for Respondent.

R.M. — *Leave granted.*

Chief Justice and Venkatarama Ayyar, J.
2nd January, 1953.

Abdul Aziz and Sons *v.* Subramanyam.
Ref. Cases Nos. 33, 39 and 40 of 1951.

Vegetable Oils and Oil-cakes (Forward Contracts Prohibition) Order (1944)—*Clause 4—If void—Defence of India Rules—Rule* 81 (2)—*Powers under—If exceeded.*

None of the provisions of the Vegetable Oils and Oil-cakes (Forward Contracts Prohibition) Order, 1944, is void or *ultra vires*. Clause 4 of the Order does not go beyond the power conferred by clauses (*a*), (*b*) and (*f*) of sub-rule 2 of Rule 81 of the Defence of India Rules. The regulation or prohibition is only in respect of distribution and disposal of articles or things. The provision for payment of difference on the basis of the rates fixed by the Government may be viewed as incidental or supplementary to the total prohibition under Rule 81 (2) (*f*) of the Defence of India Rules.

A.I.R. 1951 Nag. 320 dissented from.

The Government Pleader (*P. Satyanarayana Raju*) for the State.

M. S. Ramachandra Rao and *M. Krishna Rao* for Applicants.

D. Narasa Raju, K. B. Krishnamurthi and *T. R. Srinivasan* for Respondents.

R.M. *Reference answered.*

Krishnaswami Nayudu, J.
8th January, 1953.

Sidda Setty *v.* Muniamma.
A.A.O. No. 405 of 1950.

Hindu Married Women's Right to Separate Residence and Maintenance Act (*XIX of* 1946)—*Section* 2 (4) *and* (7)—'*Marries again*'—'*Justifiable cause*'—*Meaning of.*

On a proper construction of the language in clause (4) of section 2 of Act XIX of 1946, the words 'marries again' could only refer to a future marriage, that is, marriage after the Act. This will be a reasonable and natural construction to be put upon the words without doing violence to the language or even to the spirit of the Statute and the language does not admit of any ambiguity and is plain. To do otherwise would be to lead to inconvenient and unjust results which should always be avoided in judicial interpretation of the words of a Statute. (1950) 1 M.L.J. 63, dissented from.

The use of the general words 'justifiable cause' in section 2 (7) following specific cases in clauses (1) to (6) though need not be confined to matters which arise from the cases mentioned in the other clauses, could not, however, be extended so as to bring within it any and every cause however trivial and inconsequential. The words 'justifiable cause' may receive the plain and ordinary meaning and no limitation may be imposed upon them. The contingency of the incompatibility of two wives living together is already provided for under the Act and a further extension of the principle covered under clause (1) could not be sought for under the general words 'justifiable cause'.

'Justifiable cause' must be some cause which should be considered to be real and serious by reason of which the position of the married woman becomes miserable and cannot be invoked for temporary bickerings that are of a fleeting nature. Sentimental incompatibility of a woman with the husband cannot be treated as 'justifiable cause'.

K. K. Gangadhara Ayyar for Appellant.

S. Sankara Ayyar for Respondent.

R.M. *Appeal allowed.*

Satyanarayana Rao and Balakrishna Ayyar, JJ.
12th January, 1953.

Srinivasan *v.* Rangachari.
Appeal No. 599 of 1949.

Hindu Law—Debts—Pious obligation—Suit by an endorsee of a promissory note against the father—Sons could not be impleaded—Execution of decree—Whether son's share could be seized.

It is no doubt true that in a suit by an endorsee of a promissory note against the maker of the promissory note, the father of a Hindu joint family, no decree could be made against the son as the plaintiff, who is only an endorsee of the promissory note, is not an assignee of the debt in respect of which the pious obligation of the sons would attach; but the decree against the father, the maker, itself constitutes a debt which could be enforced in execution against the shares of the sons as well

by reason of the pious obligation of the sons to discharge the antecedent debts of the father not tainted with illegality or immorality.

N. R. Raghavachari for Appellants.

S. V. Rama Ayyangar, P. S. Srinivasa Desikan, D. Ramaswami Ayyangar, P. R. Varadarajan, K. Kalyanasundaram, T. K. Sundarachari and *K. Satyanarayana* for Respondents.

R.M.

Ramaswami, J. Panchayat Board, Gundugolanu *v.* Nagamma.
12th January, 1953. S.A. No. 972 of 1949.

Madras Local Boards Act, (*XIV of* 1920)—*Section* 225—*Scope—Levy of tax by local authority—When can be challenged in Civil Court.*

Section 225 of the Madras Local Boards Act should be limited to suits for compensation or damages. A suit for refund of tax paid under protest is not governed by section 225.

If the objection to the imposition of a tax by a local authority goes to the root and the imposition itself is beyond the powers of the local authority, a party may come to the civil court and challenge the validity of the imposition. The courts can interfere in all cases where the provisions of the Act, under which the statutory body is created, are not complied with in substance and effect.

Case-law reviewed.

T. G. Krishnamurthi for Appellants.

N. C. V. Ramanujachari for Respondent.

R.M. *Appeal allowed. No leave.*

Raghava Rao, J. Madhavi Amma *v.* Nallammal.
16th January, 1953. C.R.P. No. 1807 of 1952.

Madras Buildings (*Lease and Rent Control*) *Act,* 1949—(*Amended by Act VIII of* 1951)—*Sections* 9 *and* 12-*B*—'*As if it were a decree*'—*Meaning of—Power of revision under—Existence of a remedy by a separate suit—If a bar.*

Merely because the order for eviction by a Rent Controller is to be executed as if it were a decree by the Civil Court, it does not follow that the proceedings which have given rise to the order for eviction can be regarded as a regular suit to which the ordinary procedure of trial of suits under the Civil Procedure Code becomes applicable. The order of eviction may well be executable as if it were a decree but the supposition is that it is not a decree excepting so far as the executability is concerned.

As section 12-B of the Madras Act XXV of 1949 provides for the revision of an order under section 9, the High Court cannot refuse to consider on the merits a revision on the ground that a remedy by way of separate suit exists under Order 21, rule 103, of the Code of Civil Procedure.

M. S. Venkatarama Ayyar and *S. Viswanathan* for Petitioner.

K. Vaitheeswaran for Respondent.

R.M.

Ramaswami, J. *In re* : Venkataswami Ayya.
19th January, 1953. Crl. R. C. No. 614 of 1952.
Crl. Rev. Pet. No. 510 of 1952.

Stamp Act (*II of* 1899), *Sections* 27 *and* 64—*Offences under—What amounts to—Onus of proof—Persons liable under.*

As the law stands *two courses* are open, when a document is sought to be registered on an under-valuation. *First* of all, if the Registrar either from his own information or otherwise suspects that the valuation given is an under-valuation with intent to cheat the Government of the legitimate duty, he can ask for particulars from the party and if satisfied with its under-valuation, can refuse to register the document unless proper duty was paid. *Secondly,* in case where the document gets registered and the information is subsequently received that the valuation shown is an under-valuation and that the legitimate stamp duty has been intentionally evaded to defraud the State, it will be open to the Registrar to initiate a prosecution under section 27 read with section 64 of the Indian Stamp Act.

The burden of proof is upon the prosecution to show affirmatively and satisfactorily that the terms of section 27 have not been complied with. Mere nonpayment of a proper stamp duty does not make a person liable for prosecution under section 64 of the Act unless it is proved that he had an intention of defrauding the Government of its stamp revenue. Section 64 (*b*) is not restricted to the scribe of the instrument but is wide enough to reach and punish the person who is in truth the author of the deed and is responsible for it though he writes the deed through the hand of another. It is not correct to say that a vendee of a sale-deed will never be liable under section 64 (*a*) or (*b*) and that the executant of the document alone will be liable.

Case-law discussed.

K. V. Ramaseshan for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) for the State.

R.M. ——— *Revision allowed.*

Ramaswami, J. Dowlatu *v.* Deputy District Transport Officer.
19th January, 1953. Crl. Rev. C. No. 673 of 1952.

Criminal Procedure Code (*V of* 1898)—*Section* 197—*Prosecution under—Nature of.*

Where a public servant, purporting to discharge his official duties does an unlawful act for which he is prosecuted, the question of sanction would arise only if it is found that the acts committed by him were in discharge of his official duties. It is not a pure question of law but a mixed question of law and fact and has to be decided after investigation and cannot be short-circuited by summarily throwing out the complaint. According to the plain words of section 197, Criminal Procedure Code, it deals with cases where a public servant acts or purports to act in the discharge of his official duty and the section will afford no protection where the acts complained of plainly fall outside of duty or purported duty of a public servant. In such cases no sanction is required for prosecution.

V. V. Raghavan and *D. L. N. Raju* for Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) for the State.

R.M. ——— *Case remanded.*

Ramaswami, J. Natesa Udayar *v.* Kanakasabai Udayar.
21st January, 1953. Crl. Rev. Case No. 715 of 1952.

Criminal Procedure Code (*V of* 1898)—*Section* 250—*Scope of—Compensation—When allowed.*

It is no doubt a very salutary provision of law that is embodied in section 250, Criminal Procedure Code. It is meant to serve as a check on propensities to rush to court recklessly or to level accusations against innocent people knowing or having reason to believe they are innocent. It is not, however, to be used indiscriminately as to be a check on legitimate complaints which may be difficult of proof owing to some reason for which the complainant may not be responsible.

A Magistrate has jurisdiction to hold, after full enquiry, even after framing charge against an accused, that the charge is frivolous and vexatious. But where a Magistrate considers the evidence sufficient to justify the framing of a charge and subsequently changes his opinion he must give reasons for so changing.

Padmini Raghavan for the Petitioner.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) for the State.

R.M. ——— *Revision allowed.*

Mack, J. Ramayya *v.* Venkatachallamma.
22nd January, 1953. A.A.O. No. 15 of 1950.

Arbitration Act (*X of* 1940)—*Section* 47—*Proviso—Scope.*

Prima facie section 47 of the Arbitration Act governs references to arbitration by parties in a pending suit without reference to or knowledge of the Court. The Act does not provide for arbitration in pending suits except through Court. According-

ing to the Proviso to section 47, an award on the footing of an arbitration in a pending suit may only form the basis of a decree by consent.

Where in a private arbitration in a pending suit without the knowledge of the Court, arbitrators begin to differ from each other, give each other the lie, if not begin to quarrel with each other, another dispute is in consequence created and the only course is for a Court to ignore the arbitration and decide the suit on its merits.

B. V. Ramanarasu for Appellant.

M. S. Ramachandra Rao and *M. Krishna Rao* for Respondents.

R.M.

Subba Rao, J. Meenakshi Ammal *v.* S. R. M. Manickam Chettiar.
23rd January, 1953. Appeal No. 32 of 1948.

Transfer of Property Act (IV of 1882)—*Section* 63-A—*Mortgagee—Right to improvements or costs—'Maramat'—If includes reclamation operations.*

If there is no contract to the contrary within the meaning of section 63-A (1) of the Transfer of Property Act the mortgagee in possession will be entitled either to the improvement, effected by him or in case the improvement is not severable from the land, to its cost.

I.L.R. (1947) Mad. 411 : (1946) 2 M.L.J. 322, followed.

The word 'maramat' is comprehensive as to take in reclamation operations also.

M. S. Venkatarama Ayyar for Appellant.

R. Sundaralingam for Respondents.

R.M. *Appeal dismissed.*

Raghava Rao, J. Koyan *v.* Rajammal.
30th January, 1953. C.R.P. No. 1054 of 1952.

Court-fees Act (VII of 1870)—*Schedule I, Article I—Scope of—When applies.*

A written statement pleading a set-off, whether legal or equitable, must bear court-fee whether the set-off is tantamount to an extinguishment of the plaint claim or to a partial reduction of the plaint claim. Where the written statement on its allegations refers to the payments which will have the effect of either extinguishing or reducing the suit claim as payments which in law must be held to be in the nature of *payments to the plaintiff himself*, the defendant is not under an obligation to pay any court-fee on that amount although when he fails to prove the legal effect of the payments in question to be that of payments to the plaintiff himself, the plea of the credit claimed by the defendant on the foot of payments may have to fail.

C. K. Viswanatha Ayyar for Petitioners.

C. S. Swaminathan for Respondents.

R.M.

Raghava Rao, J. Chockalingam Chettiar *v.* Alagammai Achi.
3rd February, 1953. C.R.P. No. 1279 of 1952.

Civil Procedure Code (V of 1908)—*Order* 8-*A, rule* 8—*Applicability—Directions of Court—Scope of.*

While where a person against whom a Third-party procedure is sought to be availed of is not already a party to the record he has to be impleaded on an application to be made for that purpose, it does not follow that the Third-party procedure cannot be availed of as against a person already on record.

The considerations governing the application of the Third-party procedure to any particular case are substantially similar to those considerations which influence the discretion of the court in impleading parties under Order 1, rule 10, Civil Procedure Code.

P. S. Chandrasekara Ayyar and *P. S. Ramachandran* for Petitioners.

T. R. Srinivasan and *T. Ramalingam* for Respondent.

R.M.

Satyanarayana Rao, J. Pottiveera Raju *v.* Ambatti Abbayi.
10th December, 1952. S.A. No. 532 of 1949.

Madras Local Boards Act (*XIV of* 1920)—*Section* 160 (3) *and section* 3 (18)—*'Road-side' and 'Public Road'—Limits of.*

The expression 'Road-side' used in section 160, sub-section (3) of the Madras Local Boards Act, 1920, must be understood in the light of the definition of 'Public Road' in section 3, sub-section (18) of the Act, as meaning the land which is on either side of the road-way up to the boundaries of the adjacent property.

C. Rama Rao for Appellant.

K. Bhimasankaram for Respondent.

R.M. ——— *Appeal allowed. No leave.*

Venkatarama Iyer, J. Balakrishnan *v.* Balasundara Gramani.
28th January, 1953. S.A. No. 1158 of 1949.

Hindu Law—Alienee of Hindu joint family property—Right of partition—Allotment of the alienated property to the share of the alienor—Equities—When invoked.

An alienee of property of a Hindu joint family should normally be relegated to filing his own suit for partition and therein ask that in equity the alienated property might be allotted to his alienor's share. But in a suit filed by the coparceners for setting aside the alienation, they should be granted possession of the properties subject to these equities in favour of the alienee being worked out in an independent action.

M. S. Venkatarama Aiyar for Appellant.

Respondent not represented.

R.M. ——— *Appeal allowed. No leave.*

Venkatarama Ayyar, J. Seshi Reddi *v.* Venkatasubbayya.
29th January, 1953. S.A. No. 1159 of 1949.

Negotiable Instruments Act (*XXVI of* 1881)—*Section* 51—*Negotiation by several payees at intervals—Validity.*

Section 51 of the Negotiable Instruments Act requires that where there are several payees of a negotiable instrument all of them should endorse the instrument in order to negotiate the same. The section, however, does not require that all of them should endorse at the same time.

I.L.R. 24 Mad. 654 and 1922 M.W.N. 263, followed.

P. Babulu Reddy for Appellant.

K. Kotayya for Respondent.

R.M. ——— *Appeal dismissed. No leave.*

Satyanarayana Rao, J. Kothari & Sons *v.* Krishna Rao.
3rd February, 1953. S.A. No. 784 of 1949.

Limitation Act (*IX of* 1908), *section* 24 *and article* 90—*Period of limitation—Computation—How made.*

The third column in article 90 of the Limitation Act must be read with the modification contained in section 24 of the Act. Under that section the period of limitation should be computed from the date when the injury resulted. The time from which period begins to run under the third column of article 90 of the Limitation Act can be extended by invoking the provisions of section 24 of the Limitation Act.

I.L.R. 54 Bom. 226, 24 A.L.J. 550 and I.L.R. 8 Pat. 776, followed.

21 M.L.J. 453, dissented from.

R. Narasimhachariar for Appellant.

P. C. Parthasarathi Ayyangar for Respondent.

R.M. ———

N R C

Basheer Ahmed Sayeed, J. Thirukoilur Sri Viratteswarar Devasthanam *v.* Ramanathan Chettiar.
4th February, 1953. C.R.P. No. 627 of 1952.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951)—Sections 57 and 93—Scope—Disputes under—Jurisdiction of Civil Court—If ousted—Whether operates retrospectively.

Neither section 57 nor section 93 of the Madras Hindu Religious and Charitable Endowments Act, 1951, would on a reasonable construction of the language employed therein, amount to an ouster of the jurisdiction of the Civil Court. Merely because a provision is made giving power to the Deputy Commissioner to enquire into disputes of the nature described in section 57 it is too much to say that the Civil Court has lost its jurisdiction to try suits in which such disputes arise.

Section 93 does not appear to have any retrospective effect and refers only to suits to be filed after the new Act came into force and probably such suits cannot be filed under this Act without exhausting the remedies provided in the special Act.

T. V. Balakrishnan for Petitioner.

K. Parasurama Aiyar for Respondent.

R.M. ——— *Revision dismissed.*

Krishnaswamy Nayudu, J. Raghavendra Rao *v.* Venkammal.
6th February, 1953. A.A.O. No. 68 of 1947.

Code of Civil Procedure (V of 1908)—Order XXI, rules 11 *to* 14 *and* 16.

Once it is shown that an execution petition by a transferee decree-holder complied with the requirements of Order XXI, rules 11 to 14 and 16 of Civil Procedure Code, the effect or otherwise of a succession certificate not having been produced along with the execution, would not be of consequence, since it is nowhere said in the rules referred to, that a transferee decree-holder's application should also be accompanied by the succession certificate when the transfer is by persons who have become entitled to the decree by operation of law. The want of a succession certificate may deprive the assignee decree-holder of the remedy of the relief which he seeks in the execution petition. But it certainly cannot vitiate the petition itself as there is nothing which says that a succession certificate should be filed along with such an application.

C. A. Vaidyalingam for Appellant.

K. S. Desikan for Respondent.

R.M. ——— *Appeal dismissed. No leave.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Meera Sahib *v.* Tharaganar & Bros.
6th February, 1953. Writ Appeals Nos. 8 to 15 of 1953.

Income-tax Act (XI of 1922), *section* 5 (8)*—Validity—Constitution of India—Article* 14.

There is nothing in section 5 (8) of the Income-tax Act which is inconsistent with the right guaranteed under article 14 of the Constitution.

M. R. M. Abdul Karim for Appellant.

R.M. ——— *Appeal dismissed.*

Satyanarayana Rao, J. Tikaram Prasad *v.* Manikyala Rao.
6th February, 1953. S.A. No. 1286 of 1949.

Hindu Law—Alienation of joint family property—Proof of discharge of antecedent debt—Recital in the document different—If vitiates the binding character of the alienation.

Where an alienation of property of a Hindu joint family is made and it is proved that an antecedent debt of the father was in fact discharged out of the sale price the alienation will be binding as valid on the members of the family. Simply because in the agreement of sale a different purpose for the sale was intended or stated and was not actually carried out it would not make any difference.

A.I.R. 1928 Mad. 450, distinguished.

K. Krishnamurthi for Appellant.

Kasturi Seshagiri Rao and *Kasturi Sivaprasada Rao* for Respondent.

R.M. ——— *Decree modified.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
5th November, 1952.

District Collector of Krishna *v.*
Pulavarthi Visvanadhan and others.
A.A.O. No. 102 of 1948.

Defence of India Act (XXXV of 1939), *section* 19—*Principles of fixing compensation—Interest on compensation when allowed.*

Because section 19 (*e*) (i) of the Defence of India Act lays down specifically that in making an award the arbitrator shall have regard to the provision of sub-section (1) of section 23 of the Land Acquisition Act 1894 it is impossible to contend that the provisions of sub-section (2) of section 23 have also been attracted. The specific mention of sub-section (1) excludes the application of sub-section (2). A.I.R. 1951 Bom. 72 at page 79 followed.

In cases of requisition of property where the compensation paid is only in the nature of damages for temporary requisition no interest on such amount could be awarded. But where the requisitioning is one of permanent acquisition and amounts to conversion of the land into money the party from whom the property is taken away is entitled to interest on the value of the property not paid to him.

A.I.R. 1950 Cal. 498 approved ; (1947) 2 M.L.J. 429 : I.L.R. 1948 Mad. 567 considered and doubted.

The Government Pleader (*P. Satyanarayana Raju*) for Appellant.

V. V. Sastri, P. Somasundaram and *P. Suryanarayana* for Respondents.

R.M. ——— *Decree modified.*

Raghava Rao, J.
28th January, 1953.

Shacomraj Poonamchand *v.*
Ponmuru Venkataratnam Chetti.
C.R.Ps. Nos. 1678 and 1789 of 1952.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (2), *Proviso and section* 9—*Amendment—Scope—City Civil Court acting as court of execution—If can go into the question of the wilfulness or otherwise of the default.*

An execution proceeding under section 9 of the Madras Act XXV of 1949 will be governed by the Amending Act VIII of 1951 if it had come into force by then. An objection to the executability of an order of the Rent Controller (ordering eviction of tenant on the ground of default in payment of the rent under the original Act) on the footing that the default is not wilful as per the amended provisions of the Act can be entertained by the executing court.

(1952) 1 M.L.J. 628 followed.

P. S. Kodandapani for Petitioner.

C. A. Vaidyalingam, T. Venkatadri, K. Ramachandra Rao and *P. Venkataswami* for Respondents.

R.M. ——— *Case remanded.*

Satyanarayana Rao, J.
29th January, 1953.

Venkataramanacharya *v.* Lakshmi Devi.
S.A. No. 947 of 1949.

Transfer of Property Act (IV of 1882), *sections* 59 *and* 100—*Charge on immoveable property if amounts to an interest in immoveable property.*

A charge created on certain immoveable properties for a specific amount does not create any interest in the immoveable property unlike a mortgage and any assignment of the rights to recover an amount with a charge on the properties does not amount to a transfer of an interest in the immoveable property. It is no doubt true that a charge could be created in writing by a registered document. That is because of the specific language of section 100 of the Transfer of Property Act which attracts the provisions contained in section 59 of the Transfer of Property Act and not for the reason that a charge creates any interest in the immoveable property.

T. Krishna Rao for Appellant.

K. Srinivasa Rao for Respondent.

R.M. ——— *Appeal allowed. No leave.*

N R C

Satyanarayana Rao, J.
4th February, 1953.

Masulipatnam Municipal Council *v.* The Brindavan Talkies.
S.A. No. 993 of 1949.

Madras District Municipalities Act (V of 1920), sections 129 and 131—Explanation—Supply of water for domestic consumption—Domestic consumption and use—What amounts to—Tests.

The language of section 131 of the District Municipalities Act indicates that the essential test is the user and the nature of consumption of the water to determine whether or not it is a domestic consumption and use. The nature of the user and consumption is the deciding factor. In order to make the user a non-domestic use for purposes of trade or business the water must be used as a raw material for the purpose of the trade or business as in the case of persons carrying on dyeing business or running a laundry and so on.

The mere fact that for purposes of trade or business people go to a particular premises or reside there and utilise the water would not make the user a user for trade or business. The test is to see whether the user is a domestic user or not without reference to the premises to which the water is supplied and without reference to the persons who use it.

Case-law discussed.

K. Kuttikrishna Menon for Appellant.

D. Narasaraju and *K. B. Krishnamurthi* for Respondent.

R.M. ——— *Appeal dismissed. No leave.*

Satyanarayana Rao, J.
4th February, 1953.

Ulamussan Haji *v.* Subrama Iyer.
S.A. No. 925 of 1949.

Evidence Act (I of 1872), section 116—Estoppel—Landlord and tenant—Tenant when can set up title against the landlord—Payment of rent to the person whose title has ceased—Effect.

The estoppel as contained in section 116 of the Evidence Act between a landlord and tenant is during the continuance of the tenancy and the prohibition is against the tenant from denying the title of the landlord as it stood at the beginning of the tenancy. If, however, the title of the landlord had determined during the tenancy or if there was an eviction by title paramount or even if there was no actual eviction by paramount title, there was threat of such eviction coupled with attornment to the paramount title-holder by the tenant, it is open to the tenant to show that the landlord has no title at a point of time subsequent to the inception of the tenancy. If the tenant continued to pay rent after the cessor of the title of the lessor, such a payment is of no legal effect and is ineffective to revive the old tenancy or create a new tenancy.

M. K. Nambiyar and *V. P. Gopalan Nambiyar* for Appellant.

B. Pocker and *V. Balakrishna Erady* for Respondents.

R.M. ——— *Appeal dismissed.*

Mack, J.
5th February, 1953.

Rangaswami Naicker *v.* Janaki Ammal.
A.A.O. No. 275 of 1950.

Hindu Law—Widow's right of maintenance—If restricted to properties charged under a decree—When can Court refuse to execute against other properties of the joint family—Practice—Stay order by High Court vacated—Lower Court should proceed with the case.

It is settled law that the right of a Hindu widow for her maintenance cannot be confined to property charged with her maintenance and that she need not exhaust it all before she can proceed against other properties belonging to her husband's joint family.

1932 M.W.N. 1200 followed.

If a judgment-debtor can satisfy the executing court that the decree-holder is acting in *mala fide* collusion with one of the other judgment-debtors in execution against him only the executing court would be perfectly entitled to refuse execution in a case such as this until the charged property has been exhausted.

As a general practice, when a stay petition arising out of a C.M.A. or C.R.P. is dismissed there should be no need what-so-ever for a stay in fact to operate during the pendency of the main matter. The lower Court should retain sufficient papers in their possession to proceed further with the execution or any other matter, stay as regards which has been dismissed by the High Court, pending the disposal of the main appeal or petition.

M. Krishna Bharathi for Appellant.

S. T. Srinivasagopalachari and *S. V. Venkatasubramanian* for Respondent.

R.M. ——— *Case remanded.*

Balakrishna Ayyar, J. Gopalan *v.* Kanaran.
5th February, 1953. S.A. No. 1029 of 1949.

Transfer of Property Act (*IV of* 1882), *section* 53-A, *Proviso—Scope of protection afforded under—Notice—What amounts to—Manner of getting notice—If material—Payment of money—When sufficient to constitute part performance.*

The Proviso to section 53-A of the Transfer of Property Act is intended to protect persons who in actual truth and in fact have no notice of the interests of a contracting party. But when actually as a matter of fact they have such notice, the informality of the manner in which they acquired that notice or information does not appear to be material. The main thing is that the transferee should know. It does not matter how he knows it. So long as it is credible information, which a person of ordinary prudence will take notice of, he will be bound by it. Payment of money may also be sufficient to constitute part performance and will be sufficient compliance with the requirements of section 53-A of the Transfer of Property Act and such payment can be treated as an act in furtherance of the contract.

M. K. Nambiyar for Appellant.

D. A. Krishna Variar and *M. Sekhara Menon* for Respondents.

R.M. ——— *Appeal dismissed.*

Raghava Rao, J. Chellammal *v.* K. T. A. Abdul Rahman Rowther.
5th February, 1953. C.R.P. No. 229 of 1951.

Court-fees Act—Suit for partition of lands, in Dharmasanam village and for declaration of joint right in certain impartible items—Mode of valuation—Jurisdiction.

In a suit for partition of the plaintiff's share in a Dharmasanam village, the value for purpose of court-fee and jurisdiction must be ascertained with reference to the plaintiff's share of the items. This is on the analogy of partition suits in which the share of the plaintiff is held to matter. Where the plaintiff has also prayed for declaration of his joint right in certain porambokes incapable of partition, his relief is not capable of valuation as in the case of temple or such other trust properties. Where the land itself being impartible and communal property not capable of valuation the existence of trees on the land and which has a particular money value, cannot affect the question of valuation of the suit.

(1947) 1 M.L.J. 112; 45 M.L.J. 274 : I.L.R. 46 Mad. 782 (F.B.) and 67 M.L.J. 688 referred.

R. Kesava Ayyangar and *K. Parasaran* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) and *U. Somasundaram* for Respondents.

R.M. ——— *Revision allowed.*

Mack, J. Ponnuswami Gounder *v.* Rangaswami.
6th February, 1953. A.A.O. No. 21 of 1950.

Workmen's Compensation Act (*VIII of* 1923), *section* 2 (1) (*d*)—" *Dependant wholly or in part* "—*What constitutes.*

Whether a person is partially dependent on the earnings of a deceased workman is a matter essentially of fact to be decided in the circumstances of each case.

No general principle of law could be laid down to cover cases, even of a similar nature.

(1952) 2 M.L.J. 436 dissented from.

T. S. Krishnamurthy Ayyar for Appellant.

R. Krishnaswami Ayyar for Respondents.

R.M. — *Appeal dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Sabulal Saheb *v.*
9th February, 1953. State of Madras.
Writ Petition No. 595 of 1952.

Motor Vehicles Act (IV of 1939), *section* 60 (1) (*a*) *and Rule* 160-*C—Scope—Amendment—Effect.*

According to the earlier rule 160-C of the Motor Vehicles Rules, there can be no breach of condition of a licence, when on the date of an order passed under section 60 of the Act the tax had been paid (*vide* new rule).

T. Chengalvarayan for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Government Pleader (*P. Satyanarayana Raju*) for Respondent.

R.M. — *Order quashed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Royal Calcutta Turf Club *v.*
13th February, 1953. V. K. T. Raman Menon.
O.S.A. No. 10 of 1952.

Letters Patent (Madras)—Clause 15*—Judgment—Order refusing or allowing inspection of documents under the Original Side Rules, Madras High Court—If a judgment—Whether an appeal lies.*

An order refusing to allow inspection of certain accounts which were disclosed in the affidavit of documents of a party to a suit on the Original Side of the High Court is not a judgment within the meaning of Clause 15 of the Letters Patent and therefore no appeal lies from it. On principle there is no difference even if the order allows inspection.

52 M.L.J. 152 and I.L.R. 35 Mad. 1 followed.

Messrs. King and Partridge, K. Veeraswami, G. John Arthur and *C. K. Vedachalam* for Appellant.

S. Gopalaratnam for Respondents.

R.M. — *Appeal dismissed.*

Govinda Menon, J. Subbu Lakshmi Ammal *v.*
13th February, 1953. Venkateswara Ayyar.
C.R.P. No. 619 of 1952.

Stamp Act (II of 1899), *section* 33 *and Schedule I-A—Agreement to pay maintenance under Hindu Law—If secures an annuity—Impounding—Necessity.*

In a document, which is only an agreement recognising the pre-existing right under the Hindu Law of a wife to be maintained by the husband and which fixes the amount of maintenance payable to the wife, no question of any annuity arises and there is no necessity to impound the same.

T. R. Ramachandran and *R. Sitharaman* for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) for Respondent.

R.M. — *Revision allowed.*

Rajagopalan and Chandra Reddi, JJ. Ethirajan *v.* Commissioner of Police.
13th February, 1953. Crl. Mis. Pet. Nos. 90 and 91 of 1953.

Preventive Detention Act (IV of 1950), *section* 7 *and Constitution of India, Article* 22 (5)*—Grounds of detention sent in a language which detenu could not understand—Sufficiency—Subsequent translation—If could cure the defect if any—Insubordination in police force—If constitutes a threat to public peace under the Act.*

Quaere.—Whether the drafting of the grounds of detention in English which language a detenu does not understand, amount to a denial of the "*earliest opportunity*

of making a representation against the order of detention" within the meaning of Article 22 (5) of the Constitution of India ?

If it is necessary to furnish the detenu with the grounds for the order of detention in a language which he knew, it is not necessary that it should be simultaneous with the service of the grounds of detention itself. (1951) S.C.R. 167, followed.

Quaere.—Whether the grounds of detention could take into account events that happened subsequently to that detention ?

The safety of the State and certainly the interest of law and order depend on keeping the discipline of the police force in tact. Anything to undermine that discipline, even if it originated with an individual case of insubordination, was certainly a ground which the Government can take into account in holding that it imperilled public safety.

Messrs. Rao and Reddy and *S. Mohan Kumaramangalam* for Petitioner.

The State Prosecutor (*S. Govind Swaminathan*) for the State.

R.M. ——— *Petitions dismissed.*

Rajagopalan and Chandra Reddy, JJ. *In re* C. G. Menon.
20th February, 1953. Crl. Rev. Case No. 1034 of 1952.
(Case Referred No. 51 of 1952.)

Fugitive Offenders Act (1881), *section* 14—*Validity*—*Constitution of India, Articles* 13 *and* 14—*If offended.*

By reason of Article 13 (1) of the Constitution of India a section offending the said article is not struck out from the Statute book but no effect will be given to any of its provisions in regard to a person claiming that his fundamental rights are affected thereby. (1951) S.C.R. 228 and observations of Subba Rao, J., in W.P. No. 568 of 1952 (unreported), followed.

Section 14 of the Fugitive Offenders Act offends Article 14 of the Constitution of India in that it denies "the equal protection of the laws within the territory of India", that is, the laws relating to extradition and surrender of fugitive offenders and that, to that extent, section 14 is void under Article 13 (1) of the Constitution.

Section 14 of the Act is severable from the rest of Part II of the Act.

Section 14 of the Fugitive Offenders Act is inconsistent with the fundamental right of equal protection of the laws guaranteed by Article 14 of the Constitution and is to that extent void and unenforceable.

Quaere.—Whether the Fugitive Offenders Act, 1881, applies to India after 26th January, 1950, when India became a Sovereign Democratic Republic ?

Per Chandra Reddi, J.—The necessity for a speedy trial cannot furnish a basis for valid and reasonable classification under Article 14 of the Constitution. Speedy trial of offences may be the reason and motive for the legislation but it does not amount either to classification of offences or of cases.

In some cases classification based on geographical contiguity may be a sound one and may not be hit at by the doctrine of equal protection of laws. But under the Fugitive Offenders Act, Part II applies to the territory formerly known as British India (now Part A States) and the then Indian States (now Part B States) being governed by the procedure prescribed under Part I. If the extradition of a fugitive offender is sought from any part of a Part A State, what was designed comprehensively as British India prior to the establishment of India as a sovereign Republic, the procedure applicable is that prescribed in Part II of the Act, while if a demand for surrender of an offender is made to any Indian State, now included in the list of Part B States, a different procedure, namely, the requirements of a *prima facie* case has to be followed. This classification is discriminatory.

The Advocate-General (*V. K. Thiruvenkatachari*) and the State Prosecutor (*S. Govind Swaminathan*) for the State.

M. K. Nambiar, B. T. Sundararajan and *C. F. Louis* for the Accused.

R.M. ——— *Reference answered accordingly.*

Subba Rao, J. Chandrabhogi *v.* Gudappa Bhandary.
24th February, 1953. S.R. Nos. 1257 and 3174 of 1953.

Court-Fees Act (*VII of* 1870), *Article* 17-*B and section* 7 (*iv*) (*f*)—*Scope of—Suit for partition and accounts—Valuation—How made.*

It is settled law that a relief for partition is not capable of valuation and therefore Article 17-B of Schedule II of the Court-Fees Act will apply. It is equally well established that a relief for accounting is governed by section 7 (iv) (*f*). It has also been held that in a suit for rendition of accounts, where the amount is ascertained and a decree granted for a specific amount, the defendant should pay *ad valorem* court-fee in an appeal against that decree. If a relief for partition and a relief for accounting are two distinct subject-matters they should be separately valued even though the reliefs are clubbed together in the same suit. But if the relief for accounting is implied in the relief for partition, it cannot be said that the former relief is in respect of a different subject-matter. In that case, though it is framed as a separate relief, in effect and substance it will be part of the same relief.

I.L.R. 43 Cal. 459, followed.

I.L.R. (1940) Mad. 259 : (1940) 1 M.L.J. 32, relied on.

(1949) 2 M.L.J. 402, distinguished and doubted ; (1938) 1 M.L.J. 628, explained ; (1949) 2 M.L.J. 782 ; (1952) 2 M.L.J. (N.R.C.) 47, referred.

Case-law reviewed.

T. Krishna Rao, G. Kamath and *A. V. Narayana Pai* for Petitioner.

R.M. ——— *Appeal allowed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Chandanmull & Co.
25th February, 1953. *v.* Mohanlal Metha.
C.M.P. No. 10470 of 1952.

Constitution of India, Article 133, *sections* 109 *and* 110 *and Order* 45, *rules* 2 *and* 3, *Civil Procedure Code—Leave to appeal—Final judgment—What is.*

The language of section 109, clause (*a*), Civil Procedure Code, is absent in Article 133 (1) of the Constitution of India. It is only a final judgment that will fall within the category of judgment referred to in Article 133 (1) of the Constitution. An order like the one in question, *viz.*, an order refusing to excuse the delay in filing an application cannot be treated except as a procedural order. Though it may have far reaching consequences and adversely affect the rights of parties, by itself it cannot be held to have decided the rights of parties. If as a result of the dismissal of such an application a substantive application is dismissed, or otherwise put an end to, it may then be held that there has been a final adjudication of rights and therefore there has been a final order.

Case-law discussed and reviewed.

K. C. Doraiswamy for Petitioner.

A. N. Rangaswamy and *T. T. Srinivasan* for Respondents.

R.M. ——— *Petition dismissed.*

Somasundaram, J. Public Prosecutor *v.* Subramanyam.
27th February, 1953. Crl. Appeal No. 703 of 1951.

Prevention of Corruption Act (*II of* 1947, *as amended by Act XVI of* 1950), *section* 5 (3)—*If creates a specific offence—Presumption under.*

Section 5 (3) of the Prevention of Corruption Act, 1947, is only a rule of evidence and nothing more. It is somewhat similar to section 114, Illustration (*a*) of the Indian Evidence Act and does not create any specific offence and a separate charge need not be framed under it.

The Public Prosecutor (*V. T. Rangaswami Ayyangar*) in person.

G. Gopalaswamy for Accused.

R.M. ——— *Sentence modified.*

Krishnaswami Nayudu, J. Subba Rao *v.* Sathyanarayanamurthi.
9th January, 1953. A.A.O. No. 528 of 1949.

Civil Procedure Code (V of 1908), section 34 and Order 34, rule 11—Scope—Subsequent interest—If could be given as a rule of construction where the decree is silent—Amount due under a decree—If judgment-debtor is prohibited from disputing at a later stage.

The principle of constructive *res judicata* in execution proceedings would not be applicable to cases where the question of the amount for which execution is taken out is in dispute and it would be open to the judgment-debtor at any time in any execution proceedings to raise the objection that the amount for which execution is sought for is not the correct amount under the decree. The fact that an execution was ordered would not amount to an adjudication that the correct amount due under the decree was ascertained as the amount for which execution was ordered. It will be open always to the judgment-debtor at any stage in the execution proceedings, so long as the decree is not satisfied, to contest the correctness of the amount for which execution is sought for.

(1937) 1 M.L.J. 296, foll.

Order 34, rule 11, C.P.C., does not lay down that all mortgage-decrees shall provide for subsequent interest at a certain rate. Such interest would be payable under rule 11 of Order 34 only if the Court had awarded it by virtue of the power which it had at the time of the passing of the preliminary decree and making provision for subsequent interest.

In so far as this power is concerned, discretion is vested in courts to award interest and in what manner that discretion is to be exercised is no doubt provided under Order 34, rule 11, C.P.C. Section 34, C.P.C., is a general provision relating to interest and section 34 (2) does not confer on the Court any power to award interest but embodies a rule of construction that when a decree is silent as to interest, it must be deemed that the Court must have refused interest; and even apart from section 34 in the absence of any other provision in the decree to justify the Court coming to a conclusion that subsequent interest has been awarded, it must be held that the omission is due to the fact that the Court intended not to award such interest.

D. Narasaraju and *K. B. Krishnamurthi* for Appellant.

K. Bhimasankaram and *P. Sithikanta Sastri* for Respondent.

R. M. *Appeal allowed.*

Raghava Rao, J. Govindarajulu Chetti *v.* Balasundara Naicker.
20th January, 1953. C.R.P.No. 2262 of 1952.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), section 12-B—Revisional powers under—If limited as under section 115, C.P.C.—If wide as a right of appeal—Scope of interference by the High Court—Orders in execution under section 9 of the Act—Finding of fact—When High Court can interfere.

The substance or effect of any enactment cannot be understood except by a construction of it in accordance with its language, and with the difference in the language that undoubtedly exists between section 12-B of Madras Act XXV of 1949 as amended by Act VIII of 1951 and the language of section 115, C.P.C., it cannot be said that a revision petition under section 12-B of the Act is canvassable only within the strict limits of section 115, Civil Procedure Code. But it is equally clear that because section 12-B is wider than the language of section 115, Civil Procedure Code, it cannot be said that it is in effect and in substance a reproduction of the appeal provision which existed prior to the amendment from orders in execution under the Act.

The distinction between revisability and appealability is a thing well-defined in actual practice. The legislature did not intend to confer a right of appeal in the strict sense of that expression when it conferred a power of revision upon the High Court in the language that it employed in section 12-B of the Act.

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If an order can be held to be improper on the evidence on record the High Court will be doing the right thing in setting aside the order of the Court below. If the improbabilities which induced the Court below to reject the positive evidence were to be eschewed or excluded from consideration and there is no further ground exigible from the expressed reasoning of the Court below or from the rest of the record to justify the order passed by it the High Court can interfere in revision.

R. Mathrubutham for Petitioner.

N. Nagaraja Rao for Respondent.

R.M. —— *Revision allowed.*

Mack, J. Abdulla Kutty *v.* Janaki.
28th January, 1953. A.A.O. No. 313 of 1952.

Workmen's Compensation Act (VIII of 1923), *Schedule—Quantum of compensation—If reducible on the ground of contributory negligence—Minor injury proving fatal due to negligence of injured person.*

The Act does not make provision for the reduction of the scheduled compensation on the score of any contributory negligence on the part of a workman who dies in consequence of injuries he receives in the course of his employment, which ordinarily would not be fatal and which are simple. The analogy of criminal law of a conviction only for simple hurt though the simple hurt caused may prove fatal due to other circumstances is not applicable to compensation awardable under the Workmen's Compensation Act.

K. K. Sridharan for Appellant.

S. Mohan Kumaramangalam and *A. Mahadevan* for Respondent.

R.M. —— *Appeal dismissed.*

Satyanarayana Rao, J. Venkataramanna *v.* Gopal Rao.
29th January, 1953. S.A. Nos. 949 and 950 of 1949.

Madras Estates Land Act (I of 1908), *section* 3 (15), *explanation and section* 4*—Ryot—Meaning of—Liability to pay rent—Permanently settled estate—If could be added to or diminished in extent by act of parties.*

Under section 3 (15) explanation, Madras Estates Land Act, a person who is in continuous possession of a ryoti land for a period of twelve years is deemed to be a ryot even if the occupation was adverse to the landholder. If he became a ryot by virtue of the explanation his liability to pay rent in respect of the land in his possession is undisputed because of section 4 of the Act. The right of a landholder to collect rent cannot be extinguished by non-payment of rent for a period of 12 years. It is not possible under the law to exclude or add to the land in a permanently settled estate by act of parties.

P. Somasundaram for Appellant.

D. Narasaraju and *K. B. Krishnamurthi* for Respondents.

R.M. —— *Appeals allowed. Case remanded.*

Ramaswami, J. Manikyam *v.* Atchamma.
2nd February, 1953. S.A. No. 1575 of 1947.

Evidence—Presumption—Marriage—Presumption as to validity—Direct evidence unsatisfactory—Long lapse of time—If could rebut the presumption.

The law presumes the validity of a marriage ceremony. There is in law a presumption in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years. The mere fact that the direct evidence of the marriage which took place many years ago is unsatisfactory cannot displace this presumption.

B. V. Ramanarasu for Appellant.

P. Sithikanta Sastri for Respondents.

R.M. ——

Ramaswami, J.
4th February, 1953.

Moidinkunhi Beavy *v.* Gopalakrishna Mallaya.
S.A. No. 215 of 1948.

Easements—Natural rights and easements—Distinction—Right to light and air—When an easementary right—Right to enforce against trespassers.

The right to light and air may be either a natural right forming one of the incidents of property or it may be an easement. Natural rights are by law annexed to, and are inherent in, land *exjure naturae* and exist *prima facie* in all cases as between a landowner and his neighbour; they are rights *in rem* and enforceable against all who may violate them. Natural right though resembling easements in some respects are clearly distinguishable from them. The essential distinction appears to lie in this that easements are acquired restrictions of the complete rights of property or to put it in another way, acquired rights abstracted from the ownership of one man and added to the ownership of another ; whereas natural rights are themselves part of the complete rights of ownership, belong to the ordinary incidents of property and are *ipso facto* enforceable in law. Natural rights are themselves subject to restriction at the instance of easements. In the case of an easementary right there is no distinction in case of interference with light and air about the adjoining occupier being either a trespasser or an owner.

B. Pocker and *P. A. Q. Meeran* for Appellants.

K. Vittal Rao for Respondents.

R.M. *Appeal dismissed. No leave.*

Venkatarama Ayyar, J.
5th February, 1953.

Nanjamma *v.*
Rangappa.
S.A. No. 1027 of 1949.

Transfer of Property Act (XV of 1882), *section* 53*—Scope of—Actual indebtedness at the time of transfer—If necessary—Effect of declaring a transfer void under—If annuls the transaction altogether—Proof required to avoid a transaction.*

It is undoubted law that when a transfer is declared void as against creditors under section 53 of the Transfer of Property Act, the result is not to annul it altogether, but only to render it inoperative as against creditors and that too only to the extent necessary to satisfy their claims, and subject to their claims the transaction is valid and enforceable. (Story's *Equity Jurisprudence,* section 371, cited with approval). A creditor having the right to avoid a transaction under section 53, Transfer of Property Act, can do so by any act which shows clearly and unambiguously an intention to avoid it. The right to avoid does not depend on the ability to establish fraud in a court of law, though its practical worth will be nothing without it.

It is well settled that when a decree-holder entitled to avoid a transfer of property under section 53 of the Transfer of Property Act has elected to do so by bringing the properties to sale in execution of his decree, that avoidance enures for the benefit of the auction purchaser, notwithstanding that he is not himself a creditor or a transferee.

It is not necessary that a man should be actually indebted at the time he enters into a voluntary settlement to make it fraudulent, for if a man does it with a view to his being indebted at a future time it is equally fraudulent and ought to be set aside.

A. Bhujanga Rao and *D. R. Krishna Rao* for Appellant.

T. R. Srinivasan for Respondents.

R.M. *Appeal dismissed. No leave.*

Rajamannar, C.J. Sadasivayya *v.*
6th February, 1953. Venkataramana & Co.
S.A. No. 1266 of 1949.

Contract—Damages for breach of—Contract illegal and unenforceable—Subsequent promise to pay damages—If enforceable.

Damages for breach of a void and illegal contract cannot form the consideration for a promise to pay them. Where a contract in groundnut oil is prohibited in the Vegetable Oil and Oil Cakes (Forward Contracts Prohibition) Order, 1944, a contract in contravention of such a prohibition is an illegal contract and any subsequent promise to pay damages for its breach is not enforceable.

Ch. Suryanarayana Rao for Appellant.

K. Kotayya for Respondent.

R.M. *Appeal dismissed.*

Rajamannar, C.J. Venkatakrishna Reddi *v.*
13th February, 1953. Govindaraja Mudaliar.
S.A. Nos. 1005 to 1009 of 1949.

Practice—Suit for rent—Joint owner or a co-sharer—If could sue for proportionate rent—Agreement to pay and receive proportionate rent—Exception to rule—How proved.

It must be taken as well established that a joint owner or a co-sharer is not entitled as such to sue for proportionate rent; but it has been held that though this is undoubtedly the established rule, nevertheless, if the parties, namely, the landholders and the tenant agree to accept and pay proportionate rent according to shares, there is nothing illegal in such an arrangement. There can be an exception to the general rule where there is an agreement between the parties and presumably this agreement can be proved in one or other of the ways known to law.

A.I.R. 1936 Mad. 402, followed.

Kasturi Seshagiri Rao and *Kasturi Sivaprasada Rao* for Appellant.

A. K. Muthuswami Aiyar for Respondent.

R.M. *Case remanded.*

Mack, J. Mahalaxmamma *v.*
13th February, 1953. Ramayya.
A.A.O. No. 659 of 1949.

Code of Civil Procedure (*V of* 1908), *section* 47—*Scope of—Application in execution—Parties against whom no relief is claimed in the suit itself—If their rights could be agitated in execution under section* 47—*Practice.*

In order to bring the applications in execution within the scope of section 47 two conditions must be satisfied. First is that it must be a question arising between the parties to the suit in which the decree was passed. The second is that it must relate to the execution, discharge or satisfaction of the decree. The word 'and' in this connection in section 47 (1) appears to be highly significant. It would be opening an avenue of abuse if a plaintiff were to include as defendants in a suit quite improperly, persons who are really unnecessary, and while not being able to have any issue decided as between him and them in the suit itself, be permitted to pursue remedies against them in execution under section 47, Civil Procedure Code and have them determined without the payment of any court-fee. No doubt, it is always open to the executing Court to treat any proceedings under section 47 as a suit and, if necessary, order payment of any additional court-fee.

P. V. Chalapathi Rao for Appellant.

B. V. Ramanarasu for Respondent.

R.M. *Appeal allowed. No leave.*

Ramaswami, J.
16*th February,* 1953.

Kunhi Laxmiamma *v.*
Chinnamani *alias* Parvathi Kutty Amma.
S.A. No. 1109 of 1949.

*Malabar law—Adoption—Powers of the karnavan—Adoption—Only secular—Adoptee —If loses all rights in the natural family—Customary law—Surrender of such rights—*Attaladakkam*—Meaning of.*

A karnavan has the right and is perhaps under a duty to adopt females to the tarwad when necessary to preserve it. The reasons and objects of an adoption are wholly secular and not religious. As to whether as a rule the persons adopted lose their rights in their natural family or only gain rights in the family into which they were adopted without losing any of those rights has not yet been finally decided. The law applicable being customary the question can be decided by having recourse only to evidence of custom. It will be open to the adoptee to give up all the rights in the natural thavazhi and reserve only *attaladakkam* rights. This form of succession known as *attaladakkam* literally means, taking on extinction. It is defined as the right of succession by virtue of distant relationship to a divided branch of a tarwad when that branch becomes extinct.

M. K. Nambiar for Appellant.

S. Venkatachala Sastri and *C. F. Louis* for Respondents.

R. M.

Subba Rao, J.
17*th February,* 1953.

Singara Moopan *v.*
Venugopal Pillai.
S.A. No. 854 of 1948.

Contract—Specific performance—Pleadings—Suit by plaintiff—Readiness and willingness to perform the contract by the plaintiff—If plaintiff is absolved from the duty to aver in the plaint—Defendant repudiating the contract—Effect.

A plaintiff in an action for specific performance of a contract for the sale of land must plead that he is ready and willing to carry out the contract and repudiation of the contract by the defendant does not relieve the plaintiff from this obligation. When a party to a contract repudiates his obligation under it, the other party has two remedies. He may keep the contract open and sue for specific performance of the contract or he may accept the repudiation and file a suit for damages for breach of contract. If he elects to enforce the contract the condition precedent, *viz.*, readiness and willingness to carry out the contract, has to be fulfilled.

A.I.R. 1926 Cal. 181, doubted.

8 Bom.H.C.R. 123, distinguished.

G. R. Jagadisan for Appellant.

R. Gopalaswami Aiyangar for Respondent.

R.M.

Krishnaswami Nayudu, J.
19*th February,* 1953.

Sri Thiruvengada Ramanuja Jeer *v.*
Sri Perarulala Ramanuja Jeer Swamigal.
S.A. Nos. 2120 and 2121 of 1947.

Civil Procedure Code (V of 1908), section 9—Suit of a civil nature—What is—Suit to declare a right to certain honours—When can civil Courts entertain—Office of honour and performance of duties—Connection required to constitute suit of 'civil nature'.

Courts cannot take cognizance of actions where persons want to establish their rights to certain honours unconnected with any obligations or duty to perform any service. If the honours are claimed as attached inseparably to an office as part of its emoluments, then civil courts are entitled to make declaration of the rights to such honours. Without an office if one claims to be entitled to rights by virtue

of his eminent position as the head of a religious sect or otherwise of some importance in the field of religion quite unconnected with any kind of service which he could be compelled or obliged to perform, it will not be open to him to have such rights agitated in a civil court. Any honours which have to be treated not as mere honours but as emoluments must relate to or be connected with an office and the performance of a duty connected with the temple. Without that connection between the emoluments and the office it cannot be held that the rights arising out of the emoluments could form part of the subject-matter of a civil suit.

Case-law reviewd.

T. M. Krishnaswami Iyer and *M. Natesan* for Appellants.

K. E. Rajagopalachari, K. E. Varadan, C. A. Vaidyalingam, K. Ramachandra Rao, M. Seshachalapathi, M. Chockalingam, K. S. Champakesa Iyengar, K. C. Srinivasan and *S. V. Venugopalachari* for Respondents.

R.M. *Appeal allowed. No leave.*

Govinda Menon and Basheer Ahmed Sayeed, JJ.
19th February, 1953.

Padmanabha Bhatta *v.* Ramachandra Rao.
S.A. Nos. 2 and 47 of 1949.

Limitation Act (IX of 1908), *section* 10—*Applicability—Trust properties held by joint family—Division of the family—One member in charge of the trust religious duties—If other members could claim the properties adversely to the trust—Division of trust properties between the members—Effect of.*

It has been held that the word ' person ' in section 10 of the Indian Limitation Act includes a joint family and therefore if certain properties are impressed with the character of trust, the trustee family, by becoming sub-divided, cannot throw out that character. If by an arrangement in the family, one person is to discharge certain religious duties, that does not mean that the family as such renounced the trusteeship and the other members can claim to be holding trust properties adversely to the trust. It cannot be contended for a moment that by dividing the trust properties between themselves the members (of a joint family) have in any way disclaimed the interest of the trust in the properties.

70 M.L.J. 424, followed.

K. Srinivasa Rao for Appellants in S.A. No. 2 of 1949.

T. Krishna Rao for Appellant in S.A. No. 47 of 1949.

M. K. Nambiar and *A. Narayana Pai* for Respondents in both.

R.M. *Appeals dismissed.*

Ramaswami, J.
23rd February, 1953.

Pappikutty *v.* Sankunni Nayar.
S.A. No. 965 of 1949.

Malabar Law—Karnavan—Dual capacities of—Community of property—If necessary to continue the relationship of karnavan and anandravan.

Even though the members of a tarwad may divide all the property, they still continue *karnavan* and *anandravan*. For purposes of pollution, for the performance of funeral ceremonies, for purposes of succession the relationship is recognised to subsist. Therefore such relationship will continue to be the source of obligations, social and religious, and can subsist between persons without any community of property. In other words the karnavan has two capacities—a temporal and a spiritual one. In the former, he is the manager of the family properties, maintains the junior members, represents the tarwad transactions with strangers, etc. In his

latter capacity he presides at the ceremonies and performs all the religious duties which are incumbent on him. A stranger cannot supplant him in this latter office.

M. K. Nambiar for Appellant.

D. A. Krishna Variar for Respondents.

R.M. *Appeal dismissed. No leave.*

Ramaswami, J.
25*th February,* 1953.

Public Prosecutor *v.*
Venkatasubba Rao.
C. A. No. 123 of 1952.

Criminal Procedure Code (*V of* 1898), *section* 417—*Powers of High Court under—Appeal against acquittal—Review of evidence—When permissible.*

Under section 417, Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded ; but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court, which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons. Where the review of the evidence shows that the lower Court failed to draw the correct and clea rinferences from proved facts and the findings are clearly wrong and unreasonable though not perverse or foolish, the High Court will not hesitate to interfere and set aside the order of acquittal. When the views upon credibility are founded upon argumentative inferences from facts not disputed the Court of appeal is really in as good a position as the Trial Judge.

V. T. Rangaswami Aiyangar (Public Prosecutor) in person.

Adivi Rama Rao for Accused.

R.M. *Acquittal set aside.*

Krishnaswami Nayudu, J.
27*th February,* 1953.

Ramiah Pillai *v.*
Adhi Kesavalu.
A.A.O. No. 101 of 1952.

Code of Civil Procedure (*V of* 1908), *Order* 22, *rule* 3—*Application under—Condition requisite—Application to come on record in the place of a deceased plaintiff—If applicant should be a legal representative in the strict sense—Survival of the right to sue—Sufficiency.*

To entitle one to apply under Order 22, rule 3, it is necessary that he should first establish that he is a legal representative of the deceased plaintiff and then satisfy that the right to sue has survived over to him, when alone he could be allowed to bring himself on record and continue the suit. It is sufficient under Order 22, rule 3 if it is found that the right to sue survives to the applicant who desires to bring himself on record, though he may not strictly come within the definition of 'Legal Representative' under the Code.

In order therefore to entitle a person to bring himself on record as the legal representative or as a co-plaintiff to continue the suit, what he has previously to establish is that the right to sue has survived to him even though he may not be strictly the legal representative in the sense that he represents the estate of the deceased person.

T. R. Srinivasa Aiyangar, K. S. Desikan and *K. Raman* for Respondent.

R.M. *Appeal dismissed.*

[F.B.]

Rajamannar, C.J.,
Rajagopalan and Venkatarama Ayyar, JJ.
4th March, 1953.

The Crompton Engineering Co. (Madras), Ltd. *v.* The Chief Controlling Revenue Authority, Madras.

Case Ref. No. 61 of 1952 under section 57 of the Indian Stamp Act.

Stamp Act (*II of* 1899), *section* 2 (17)—*Scope of—Document purporting to transfer—Invalid under the law—If liable to stamp duty.*

That the transfer contemplated by section 2 (17) of the Indian Stamp Act is a transfer valid in law, should be obvious. A document may be an instrument, purporting to transfer a right in immovable property, though in law it could not and did not transfer that right. To make a document liable to stamp duty as a mortgage deed it is not enough if the document purports to effect a transfer. It must 'transfer'.

Messrs. King and Partridge for Applicant.

The Government Pleader (*P. Satyanarayana Raju*) for Respondent.

R.M. *Reference answered accordingly.*

Ramaswami, J.
4th March, 1953.

Adam Saheb *v.* Kuppuswami Pillai.
S.A. No. 453 of 1947.

Madras Estates Land Act (*I of* 1908), *section* (11) *and section* 12—*Rent—If includes rent paid in respect of a lease of trees alone without the land—Section* 12—*Applicability.*

The Madras Estates Land Act does not contemplate a patta for trees alone being held as a holding and the *vari* or rent payable under a patta for trees alone is not rent within the definition of section 3 (11) of the Act. Where trees, therefore, are leased out distinct from the land they are taken out of the purview of section 12 of the Act and the ryots are not entitled to the ownership of the trees.

T. Krishna Rao for Appellants.

Messrs. King and Partridge, M. Sundaram and *V. Pattabiraman* for Respondents.

Appeal dismissed.
R.M. *No leave.*

Ramaswami, J.
4th March, 1953.

Ranganathan *v.* Rajagopalan.

C.M.P. No. 6118 of 1952 in A.S. No. 257 of 1950.

Hindu Women's Rights to Property Act (*XVIII of* 1937), *section* 3 (2) *and* (3)—*Widow's rights under—Nature and incidents of—Devolution on her death.*

Under the Hindu Women's Rights to Property Act the widow is to be in the same position as a son excepting that her rights are subject to certain restrictions as regards alienation and that on her death the share goes, not to her stridhana heirs but to those who would inherit it had the last male owner, that is to say, the husband, died at the moment of her death. Mayne on *Hindu Law and Usage,* 11th Edn., pp. 708 and 712, cited with approval. A.I.R. 1951 Orissa 378 at p. 386, followed.

V. Seshadri and *K. S. Ramamurthi* for Petitioner.

S. Viswanathan for Respondent.

R.M. *Injunction application dismissed.*

Mack and Krishnaswami Naidu, JJ. Venkanna *v.* Narayanamma.
19th December, 1952. Appeal Nos. 236 and 661 of 1950.

Hindu Law—Stridhana property of a woman—Right of illegitimate daughter to succeed.

An illegitimate daughter of a Hindu woman is entitled to succeed to the stridhanam of the mother, though her right beyond succeeding to her mother's estate has not been recognised. Once it is held that there exists heritable blood between the mother and the illegitimate daughter it is rather difficult to conceive how that ceases to exist beyond the mother, that is where she claims entitled to inherit her grandmother's estate.

I.L.R. 26 Mad. 509, followed; (1937) 1 M.L.J. 28, distinguished; I.L.R. 45 Bom. 597, doubted; Case-law discussed; Texts considered.

Illegitimacy is no bar to succession to women's stridhanam. Whatever may be the rules regarding succession of illegitimate sons to their putative father's property in so far as illegitimate stridhana heirs are concerned, either daughter or daughter's daughter or son or son's son they would be entitled to succeed to their mothers' estate in preference to the other heirs.

P. Somasundaram and *D. Narasaraju* for Appellant in Appeal No. 236 of 1950.

E. Venkatesan and *D. L. Narasimha Raju* for 1st Respondent in Appeal No. 236 of 1950.

E. Venkatesan, P. Ramachandra Reddi and *D. L. Narasimha Raju* for Appellant in Appeal No. 661 of 1950.

D. Narasaraju and *K. B. Krishnamurthi* for 1st Respondent in Appeal No. 661 of 1950.

R.M.

Satyanarayana Rao and Balakrishna Ayyar, JJ. Ramaswami Pillai *v.* Muthuswami Pillai.
28th January, 1953. Appeal No. 165 of 1949.

Hindu Women's Right to Property Act (XVIII of 1937) and the Hindu Women's Right to Property (Amendment Act) (XI of 1938) and Madras Act (XVI of 1947)—Extension to agricultural land—Validity.

The effect of what is compendiously styled as "referential legislation" is to put the sections of a former Act into a latter Act just as if they had been written into it for the first time. This form of legislation was recognised and adopted with a view to extend the provisions of the two Central Acts (XVIII of 1937) and (XI of 1938) to agricultural lands in the Governor's provinces. On a reading of the sections themselves of the Madras Act (XVI of 1947) it is clear that the intention of the Legislature was to extend the provisions of the two Central Acts to agricultural lands and by implication they were actually so extended. It was not an attempt on the part of the Legislature to amend the Central Act and the Madras Act is valid and the provisions of the two Central Acts apply to agricultural land in the province.

K. S. Sankara Ayyar and *V. Sundaresan* for Appellants.

M. Natesan and *C. A. Seshagiri Sastri* for Respondents.

R.M. *Appeal dismissed.*

Mack and Krishnaswami Naidu, JJ. Rathinasabapathi Pillai *v.* Saraswathi Ammal.
29th January, 1953. Appeal No. 593 of 1949.

Hindu Women's Right to Property Act (XVIII of 1937), section 3 (2)—Scope—Status of the widow if that of a coparcener—Hindu Law rights of the widow—If enlarged by the statute—Right to question alienations as a coparcener—Right of maintenance if taken away.

The Hindu Women's Right to Property Act does not enlarge the rights of a widow except to the limited extent provided therein, namely, to ask for a partition of her husband's share which she would, however, be entitled to hold and enjoy as a Hindu women's estate, and her position and status in the joint family

is not in any way affected or varied by the enactment. She continues to be a member of the joint family and does not become a coparcener however much she might have become entitled to the interest which her husband possessed in the joint family properties.

The word 'interest' in section 3 (2) of the Act cannot mean that all the right, title and interest which her husband had, she became entitled to, including a right of action which he would have had to question an alienation if he had been alive. It only means the quantum of interest which the husband would be entitled to in the joint family properties.

The widow's general right to be maintained out of the joint family estate has not been taken by away by the Act, since there is no reference to it. Such a right is still available and the option would rest with her to claim maintenance or a share but not both.

M. S. Venkatarama Ayyar and *S. Nagaraja Ayyar* for Appellant.

K. R. Krishnaswami for Respondent.

R.M. ——— *Appeal dismissed.*

Satyanarayana Rao, J. Marudappa Thondaman *v.*
13th February, 1953. Chokalinga Thondaman.
S.A. Nos. 1357 and 1358 of 1949.

Practice—Power to compromise—If includes the power to refer to arbitration.

A power to compromise would undoubtedly carry with it the power to refer to arbitration as it is one of the modes by which a matter may be settled.

I.L.R. (1946) Nag. 824 (F.B.), followed.

K. Sundaralingam for Appellants.

K. S. Desikan and *K. Raman* for Respondent.

R.M. ——— *Appeals dismissed. No leave.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Kunjammal *v.* Krishna Chettiar.
17th February, 1953. L.P.A. No. 124 of 1949.

Practice and Procedure—Decree capable of execution—Appellate decree supersedes that of the Court below—Only one decree in a suit capable of execution—Person against whom execution is sought not a party to the appeal—If would make any difference.

The law is well settled that when a decree is taken in appeal to a higher Court the decree passed in appeal supersedes that of the Court below and becomes a decree in the suit itself and that thereafter that is the only decree which is capable of execution and that period of limitation for execution would run from the date of that decree. It makes no difference whether the person against whom execution is sought is a party to the appeal or not, any more than whether the appeal related to the entire subject-matter of the suit or only to a part thereof. In either case on the principle that there can be only one decree in a suit it must be held that the only decree which is capable of execution is the decree passed in appeal.

B. V. Viswanatha Ayyar for Appellant.

K. Parasurama Aiyar for Respondent.

R.M. ——— *Appeal dismissed*

Rajamannar C.J. and Venkatarama Ayyar, J. A.M. S.S. V.M. & Co. *v.*
State of Madras.
24th February, 1953. C.M.P. No. 4229 of 1951.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948)—Validity in so far as the Act relates to Fisheries—Scope of section 20.

The lease in favour of the petitioner relating to Chank fisheries in the gulf of Mannar and Palk Bay was terminated by the Government by a notice dated 13th March, 1951, issued under section 20 of the Madras Estates Abolition Act.

Held (i) the Act was not beyond the competence of the Madras Legislature in so far as it relates to Fisheries,

(ii) The Act was not incompetent as being legislation on Inter-state trade and commerce in so far is it relates to Fisheries.

(iii) The words 'such right' in the 2nd and 3rd provisos to section 20 refer only to the right dealt with in the body of the section and the 3rd proviso is a proviso to the section and not to the 2nd proviso. The true effect of the section is (*a*) Rights validly created before 1st July, 1945, will be valid. (*b*) Such rights, however, may be determined under the 3rd proviso if it is in the public interest to do so and in such cases compensation will be payable under section 20 (2) and (*c*). Rights created after 1st July, 1945, if they are for a period exceeding one year are liable to be avoided under the 2nd proviso.

M. R. M. Abdul Kareem for the Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) for first Respondent.

K. S. Sankara Iyer and *T. B. Balagopal* for second Respondent.

V.P.S. — *Petition dismissed.*

Ramaswami, J. G.-G. in Council represented by G.M.
25th February, 1953. Southern Ry. *v.* Sankarappa.
S.A. No. 1106 of 1952.

Civil Procedure Code (V of 1908), section 80—Notice under—Object of—Essential of a notice under—Minor details—Errors in—If would render the notice improper or invalid.

The object of section 80, Civil Procedure Code, is to give time for the Government to consider the whole matter and see whether it cannot be settled out of court and wasteful litigation avoided. The essential requirements of a notice under this are that the addressee should be identified and must have received the communication; secondly, there should be no vagueness or indefiniteness about the person giving the notice and who must also be the person filing the suit and the notice must also give the details which are specified in that section and thirdly, two months' time allowed must expire before the suit is laid. Once these requirements are satisfied, minor details like the misdescription of the person to whom the communication is addressed would not make it an improper notice which does not comply with the requirements of section 80, Civil Procedure Code.

C. Govindaraja Iyengar instructed by *Messrs. King and Partridge* for Appellant.

Ch. Suryanarayana Rao and *Ch. Ramakrishna Rao* for Respondent.

R.M. — *Appeal dismissed. No leave.*

Ramaswami, J. Kutti *v.* Kunhammed.
26th February, 1953. S.A. No. 2303 of 1950.

Practice and Procedure—Suits for partition—Rule as to inclusion of all divisible properties—Exceptions to.

The rule that partition suits should embrace all the joint family properties is neither arbitrary nor technical and is founded on sound and weighty reasons. But this is the general rule and there are several exceptions which are equally well recognised. There cannot be a rigid rule requiring the dismissal of every type of suit for partition which does not embrace all the joint family properties.

S. Venkatachala Sastri for Appellant.

C. K. Viswanatha Iyer for Respondent.

R.M. — *Appeal dismissed.*

Balakrishna Ayyar and Chandra Reddi, JJ. Public Prosecutor *v.* C. Paramasivam.
2nd March, 1953. Crl. Rev. Case No. 862 of 1952.

Code of Criminal Procedure (V of 1898), section 162 and Indian Evidence Act (I of 1872), section 25—'Police Officer'—Who is—Excise Officers empowered as Police Officers under Opium Act—If Police Officers—Admissibility of confession made before such Officers.

In relation to an offence under the Opium Act a Prohibition Officer on whom the State Government has conferred the powers of an officer in charge of a Police Station, is a Police Officer for purposes of section 162 of the Criminal Procedure Code and section 25 of the Indian Evidence Act.

I.L.R. 51 Bom. 78 (F.B.) and I.L.R. 61 Cal. 607 (F.B.), followed.

I.L.R. 12 Pat. 46 (F.B.), dissented from.

There is no exhaustive definition of the expression 'Police Officer' in any of our statutes. In the absence of a statutory definition and where one is not expressly called a Police Officer, the next step is to ask what does the law require him to do? What are the duties imposed on him and what are the powers conferred on him? If they are substantially those of a Police Officer there need be no qualms in regarding him as one.

Per *Chandra Reddi, J.*—The term 'Police Officer' used in section 25 of the Evidence Act is with reference to the functions exercised by the officer and not as an officer of the Police department. It only means an officer exercising police powers and is not confined to an officer belonging to the police department.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) in person.

S. Govind Swaminathan and *S. Rajaraman* for the (Accused) Respondent.

R.M. *Revision dismissed.*

(F.B.)

Rajagopalan, Balakrishna Ayyar and Chandra Reddi, JJ. Nalla Buligadu, *In re.*
3rd March, 1953. Crl. Rev. Case No. 977 of 1951.
Crl. R.P. No. 960 of 1951.

Criminal Procedure Code (V of 1898), sections 209 and 437—Order of discharge under—Revisability—Powers of the Court of Revision—When could be exercised—Termination of proceedings before the lower Court—If necessary.

It is competent for a District Magistrate or the Sessions Judge to revise an order of discharge by a Magistrate without waiting for the termination of the proceedings before the Magistrate. When a Magistrate discharges an accused in respect of an offence exclusively triable by a Court of Sessions and proceeds to try him himself for an offence within his jurisdiction on the language of section 437, Criminal Procedure Code, it will be open to the District Magistrate to direct the committal of the accused for trial "upon the matter of which he has been, in the opinion of the District Magistrate, improperly discharged".

(Case-law reviewed.)

A.I.R. 1952 All. 231 (F.B.), dissented from.

I.L.R. 24 Mad. 136 and subsequent cases in Madras followed.

O. Chinnappa Reddy, P. Ramakrishna and *B. Prasada Rao* for Accused.

The Public Prosecutor (*V. T. Rangaswami Aiyangar*) for the State.

R.M. *Petition dismissed.*

Satyanarayana Rao, J. Venkatasubbamma *v.* Narayanaswami.
5th March, 1953. S.A. No. 194 of 1951.

Gift—Deed of—Irrevocable—Conditions for—Acceptance of gift by donee—When complete—How proved—What constitutes sufficient acceptance.

If after the execution of a deed of gift, the deed was delivered to the donee, but the registration of the document took place later, the acceptance of the deed after the execution would complete the gift and make it irrevocable. The acceptance by the donee must, however, be during the lifetime of the donor. The fact that the deed was executed and registered would not make it irrevocable if in fact there was no acceptance by the donee either before registration but after execution or even after registration.

If there was no delivery of the deed and the possession of the properties to the donee it may be open to the donee to prove by cogent evidence that there were other modes of acceptance, for example, a letter written immediately after the execution of the document. Anterior negotiations or talks about the transfer of

property by way of gift would not amount to acceptance of the transfer of the property by gift. Acceptance may be implied but mere passive acquiescence such as standing by when the deed was executed or registered is no acceptance.

C. V. Dikshitulu and *N. Rajeswara Rao* for Appellant.

M. S. Ramachandra Rao and *M. Ramakrishna* for Respondent.

R.M.

Venkatarama Ayyar, J.
5th March, 1953.

Chinna Channayya *v.* Regional Inspector of Municipal. Councils, Vijayawada.
Writ Petition No. 130 of 1953.

Madras Village Panchayats Act (*X of* 1950), *section* 8 (1)—*Reservation of seats—Regional Inspector—If bound to reserve seats—Duty or discretion—Writ of* mandamus *to compel an Inspector to reserve seats—If could lie.*

It is a condition precedent to the grant of a writ of *mandamus* that the party against whom it is sought must be shown to be under a duty to do that which it is charged with having failed to do.

Section 8 (1) of the Madras Village Panchayat Act, 1950, does not impose any duty on the Regional Inspector to reserve seats for members of the Scheduled Castes but it is only a matter of discretion. Section 8 (1) of the Act does not impose a duty, but only confers a power.

N. V. B. Shankar Rao for Petitioner.

The Government Pleader (*P. Satyanarayana Raju*) for the State.

R.M. — *Petition dismissed.*

Chandra Reddi, J.
5th March, 1953.

James Manickam *v.* Jaya Narayan Daga.
C.R.P. No. 1686 of 1952.

Civil Procedure Code (*V of* 1908)—*Order* 37, *rule* 2 *and Schedule B—Form* 4—*Summary suit—Leave to defend—Application out of time—If Court can extend the time—Section* 5, *Limitation Act—Applicability.*

When a period has been fixed for the purpose of doing an act or taking a proceeding under the statute of Limitations or under any other enactment, Courts do not possess the power to extend the time unless and until such a power is specifically conferred on them.

Order 37, Civil Procedure Code, does not contain any provision for extending the time prescribed in the summons in form No. 4, Schedule B of the Code. Nor has section 5 of the Limitation Act been extended to this chapter of the Civil Procedure Code. The City Civil Court, to which Order 37, Civil Procedure Code applies, has no power to condone the delay in filing and obtaining leave to defend suits filed under Rule 2 of Order 37, Civil Procedure Code.

Messrs. *Jan* and *San* for Petitioner.

V. Krishnaswami for Respondent.

R.M. — *Petition dismissed.*

Ramaswami, J.
9th March, 1953.

Katheesa *v.* Assema.
S.A. No. 1102 of 1949.

Indian Registration Act (*XVI of* 1908), *section* 17 (*vi*)—*Amendment Act XXI of* 1929—*If has retrospective effect—Compromise decree affecting immovable property—prior to* 1929—*If requires registration.*

Section 17 (*vi*) of the Indian Registration Act, amended by Act XXI of 1929, has no retrospective effect. Also a decree affecting immovable property, which is the subject-matter of a compromise and which is also the subject-matter of the suit, need not be registered. Hence a pre-1929 compromise which has been recorded and which covers immovable property need not be registered.

M. C. Sridharan for Appellant.

V. P. Gopalan Nambiar for Respondent.

R.M. ——— *Appeal dismissed. No leave.*

Rajamannar, C.J. and Venkatarama Ayyar, J. 10*th March*, 1953.

Veerappa Pillai *v.* Rathnaswami Nadar. L.P.A. No. 299 of 1952.

Motor Vehicles Act (IV of 1939), section 47—Issue of Permit—Matters which can be taken into consideration—Benefit of the public—Guiding factor—Previous experience—If a criterion—Policy of preferring small operators—If inherently bad.

It should be a material consideration to take into account that the appellant has experience of a particular route over which the stage carriage has to be run and that such a consideration is not out of place in deciding to whom, in the interest of the public, the stage carriage permit should be granted. Section 47 does not prescribe rules for selection when there are several applicants for the grant of a stage carriage permit. Therefore, in making the selection the authorities ought to be guided by what is for the benefit of the public. It cannot be said that the policy of preferring small operators is inherently bad, as not being in the interests of the public.

M. K. Nambiar, G. R. Jagadisan and *S. Somasundaram* for Appellant.

Messrs. John and *Rao* for Respondent.

R.M. ——— *Appeal dismissed.*

(F.B.)
Rajamannar, C.J., Rajagopalan and Venkatarama Ayyar, JJ. 12*th March*, 1953.

Rajamannar and Others, *In re.* S.R. No. 9132 of 1952.

Court-fees Act (VII of 1870), section 7 (iv-a) and Article 17-A (i) of Schedule II (as amended in Madras)—Rule 2 of the Rules framed by the Madras High Court under section 9 of the Suits Valuation Act—Effect of—Rule if applicable to cases where fixed court-fee is leviable—Construction of Rule.

Prima facie a suit for a mere declaration that a compromise decree is not binding on a plaintiff and where no consequential relief is prayed for would fall under Article 17-A (i) of Schedule II of the Court-fees Act.

It is not correct to so construe section 9 of the Suits Valuation Act as to confer a power on the High Court to provide for a separate class of suits not falling within any of the classes mentioned in the body of the Court-fees Act or in the schedules. Nor can a rule framed under section 9 of that Act provide whether court-fee should be calculated on an *ad valorem* basis or on a a fixed basis. Section 9 of that Act deals with that class of suits which does not admit of being satisfactorily valued and provides that the High Court may provide for the valuation of such suits. It does not interfere in any manner with the scheme relating to classification of suits provided in the body of the Court-fees Act and its schedules. If the rule were to be construed to have this effect, it would be in excess of the powers conferred by section 9 of the Suits Valuation Act.

In a suit filed to obtain a declaratory decree where no consequential relief is prayed, which does not fall within the category of suits provided for by section 7 (*iv-a*) of the Court-Fees Act, court-fee is not leviable on an *ad valorem* basis on the value of the subject-matter of the suit computed in accordance with Rule 2 of the rules framed by the High Court under section 9 of the Suits Valuation Act, in 1943.

W. Kothandaramayya for Appellant.

The Government Pleader (*P. Satyanarayana Raju*) for Respondent.

R.M. ——— *Reference answered accordingly.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Venkata Subba Rao *v.*
23*rd January*, 1953. Lakshminarasamma.
Appeal No. 393 of 1947.

Hindu Law—Joint family—Life insurance policy of one of the members—Presumption as to being his separate property—When insurance policy amount can be treated as joint family asset.

Having regard to the modern social conditions the general presumption must be that when one of the members of a joint family insures his life the amount of the policy belongs to the assured as his separate property and does not become a joint family asset. No doubt, if there is a clear indication that the member did not intend to treat it as his separate asset, the position would be different. In a case where each of the several members of the family has taken a policy in his name the presumption becomes stronger that the policies were not part of the joint family assets.

M. S. Ramachandra Rao and *M. Krishna Rao* for Appellants.

V. Rangachari, P. V. Chelapathi Rao, T. M. Krishnaswami Ayyar and *M. V. Nagaramiah* for Respondents.

R.M.

Govinda Menon, J. K. K. P. Thavazhi *v.* Sree Devi.
27*th February*, 1953. S.A. No. 1671 of 1948.

Malabar Law—Karnavan—When ceases to represent the family.

It is settled law that unless a karnavan had renounced his powers, or by a regular family karar entrusted the management to some other member of the tarwad, the karnavan would not lose his rights to represent the family.

N. Sundara Ayyar for Appellants.

M. K. Nambiar for Respondents.

R.M. *Decree modified. Appeal dismissed.*

Ramaswami, J. Syed Useni *v.* Munuswami Nainar.
5*th March*, 1953. S.A. No. 1506 of 1949.

Civil Procedure Code (V of 1908), section 47—Scope—Application under—Converted into a suit—Executable decree—Remedies under—If could be pursued by independent proceedings.

Where a decree is executable the relief can only be worked out in execution and not by means of a separate suit either independently or by conversion as contemplated under section 47 (2) of the Code of Civil Procedure and the period of limitation is three years from the date of decree.

Case-law reviewed.

S. Thyagaraja Ayyar for Appellants.

M. S. Venkatarama Ayyar for Respondent.

R.M. *Appeal dismissed.*

Rajamannar, C.J. and Venkatarama Ayyar, J. Meenakshi Mills, Ltd., Mathurai *v.*
6*th March*, 1953. Labour Appellate Tribunal, Bombay.
L.P.A. No. 148 of 1952.

Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950), *section* 7 (2) (*b*)—*Conciliation Proceedings—Meaning of—Writ of* certiorari *against erroneous decision of Appellate Tribunal—If available.*

The term 'Conciliation Proceedings' though not defined in the Industrial Disputes Appellate Tribunal Act, must be understood to refer to the Conciliation Proceedings mentioned in the Industrial Disputes Act. Section 2 (*e*) of the Industrial Disputes Act defines Conciliation Proceedings as meaning any proceeding held by a conciliation officer or Board under the Act.

The words 'the settlement arrived at between the parties in the course of Conciliation Proceeding' mentioned in section 7 (2) (*b*) of Act XLVIII of 1950 refers to the settlement arrived at in the course of Conciliation Proceedings under the Industrial Disputes Act.

N R C

The High Court cannot under Article 226 of the Constitution convert itself into a court of further appeal from the Appellate Tribunal. No *certiorari* is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous.

N. Rajagopala Ayyangar, K. Subramaniam and *Alladi Kuppuswami* for Appellant.

Arunachalam, Jagannadhadas & Co., and The Government Pleader (*P. Satyanarayana Raju*) for Respondents.

R.M. ——— *Appeal dismissed.*

[Full Bench]

Rajamannar, C.J., Rajagopalan and Venkatarama Ayyar, JJ.
6th March, 1953.

Abdul Rahman Sahib *v.* Mohd. Siddiq.
C.R.P. No. 1785 of 1949.

Arbitration Act (X of 1940), *section* 47—*Proviso—Applicability—Award—When could be made the basis of a decree under Order* 23, *rule* 3, *Civil Procedure Code.*

Under the Proviso to section 47 of the Arbitration Act an arbitration award obtained otherwise than in proceedings taken in accordance with the Act cannot without more be recognised as a compromise or adjustment of the suit. No decree can be passed thereon under the provisions of Order 23, rule 3, Civil Procedure Code.

I.L.R. (1946) Mad. 39 : (1945) 1 M.L.J. 463, overruled.

But, if after an award is made, the parties thereto agree to accept it, that will be a compromise and a decree based thereon could be passed under Order 23, rule 3.

Case-law discussed.

K. S. Desikan for Appellant.

K. G. Srinivasa Ayyar for Respondents.

R.M. ——— *Revision allowed.*

Mack, J.
12th March, 1953.

Chengama Naidu *v.* Velayudha Mudaliar.
A.A.O. No. 313 of 1949.

Madras Agriculturists' Relief Act (IV of 1938), *sections* 23 *and* 24—*Scope and effect of—Sale set aside under—Right of a* bona fide *purchaser to get back the sale price paid by him—Inherent right of Courts to protect suitors before it from harm by its own acts.*

Sections 23 and 24 of Act IV of 1938 leave unimpaired the inherent right of the Court to see that any suitor before it is not injured by its own act or by a decision which is reversed by a Court of appeal, when the party before it is a *bona fide* auction purchaser for valuable consideration. (1941) 2 M.L.J. 1060, distinguished.

The only consequence laid down in section 23 when a sale is set aside is that it " shall be deemed not to have taken place at all ". Under section 24 a purchaser shall be entitled to an order for payment of any purchase money paid by him against the person to whom it has been paid where a sale is set aside under section 23 or section 23-A of the Act.

Kasturi Seshagiri Rao and *Kasturi Sivaprasada Rao* for Appellant.

R. Gopalaswami Aiyangar, K. Rajah Ayyar and *M. Natesan* for Respondents.

R.M. ——— *Appeal allowed.*

Venkatarama Ayyar, J.
12th March, 1953.

Kandaswami *v.* Dy. Registrar of Co-operative Societies, Coimbatore.
W.P. No. 1 of 1953.

Madras Co-operative Societies Act (VI of 1932)—*Registrar of Co-operative Society—Duties of—When administrative and when judicial—Writ of* Certiorari *to quash departmental communication—If could lie.*

Under the general scheme of the Co-operative Societies Act the functions of the Registrar with reference to Co-operative Societies under the Act are both administrative and judicial. The Registrar has to arrange for audit of the accounts of the societies and for inspection of their work. He has also powers to supersede the committee, to dissolve the society and direct its winding up. All these are purely of an administrative character. The provisions for the reference to arbitration of

disputes and the conduct of arbitration, etc., are judicial functions involving the adjudication of civil rights of parties.

No writ of *certiorari* is admissible to quash a purely departmental communication, which cannot be regarded as a judicial or quasi-judicial order.

Row and Reddi and *S. Mohan Kumaramangalam* for Appellants.

The Government Pleader (*P. Satyanarayana Raju*), *K. Rajah Ayyar* and *C. S. Vidyasankaran* for Respondents.

R.M. ——— *Petition dismissed.*

Govindan Menon and Basheer Ahmed Sayeed, JJ. Kuttyai Lakshmi *v.*
12th March, 1953. Puthia Purayil.
A.A.O. No. 76 of 1949.

Malabar Law—Gift to a member of a tavazhi—Presumption as to tarwad property.

It is now settled law that if a gift is made to an entity which constitutes a tavazhi as such, then the presumption is that the donor intends that the gift should have all the incidents of tarwad property attached to it.

(1946) 2 M.L.J. 175 : I.L.R. (1947) Mad. 272 at 293, differed.

(1939) 1 M.L.J. 604, distinguished.

If the donees constitute a natural group according to the Marumakkathayam Law capable of acquiring and owning property, there is no reason why this presumption should not be applied to them. The degree of propinquity between the donors and the donees is immaterial and affords no test. Where a Marumakkathayam donor gives properties to the children of the same mother or to a member of a tavazhi without any express indication that an absolute alienable estate was granted, the presumption is that the donor intended to confer only an estate with all the incidents of tarwad property.

(1915) 29 M.L.J. 481 : I.L.R. (1915) 39 Mad. 317 (F.B.), followed.

A. Achuthan Nambiar for Appellant.

K. Kuttikrishna Menon and *V. Balakrishna Eradi* for Respondents.

R.M. ——— *Appeal dismissed.*

Satyanarayana Rao and Rajagopalan, JJ. Rakkiyana Gounder *v.*
13th March, 1953. Chinnu Goundan.
S.A. No. 1167 of 1949.

Evidence Act (I of 1872), section 92—Proviso 2—Scope of—Oral evidence to 'add to' the terms of a document—When inadmissible.

A contemporaneous oral agreement which has the effect of reducing a sale to a mortgage is not provable in view of section 92 of the Evidence Act. If, however, the parties did not seek to establish a mortgage by oral evidence but intend to prove an oral agreement to reconvey, which is a distinct transaction, Section 92 of the Evidence Act does not stand in the way. If the arrangement pleaded amounts to a single transaction of the nature of a mortgage, and if the agreement to reconvey is oral it is hit at by section 92 of the Evidence Act. The words 'adding to' occurring in section 92 of the Evidence Act contemplates the addition to the terms of the sale deed and not a collateral matter, which is added on by the agreement.

P. S. Kailasam and *M. S. Sethu* for Appellant.

N. Rajagopala Ayyangar for Respondent.

R.M. ——— *Appeal allowed. Case remanded.*

Govinda Menon, J. Srinivasan *v.* Bukthavatsalu Naidu.
13th March, 1953. C.R.P. No. 2199 of 1951.

Civil Procedure Code (V of 1908), Order 37, rule 2—Summary suits—Leave to defend—Power of Court to extend time—Limitation Act—Article 159—Applicability.

It is true that there is no specific provision in Order 37, rule 2, Civil Procedure Code, or in the Limitation Act empowering a Court to condone a delay in appearance beyond the ten days prescribed by the summons in Form No. 4 of Schedule B, Civil Procedure Code. But if the Court has passed no decree it clearly has ample

discretion to give the defendant such leave, notwithstanding the fact that he has not appeared within ten days of the service of the summons on him in Form No. 4, Appendix B of the Code.

(1949) 1 M.L.J. 514, approved.

It is somewhat incongruous that a court which, after passing a decree on default of appearance can set aside the same should have no power, before passing the decree to extend the time for applying for leave to defend.

The period of ten days fixed under Article 159 of the Limitation Act is not an inflexible one. It can be construed only as prescribing the period of ten days when the summons does not specifically fix a date for the hearing.

Sundararajan and *Sivaswami* for Appellants.

A. K. Muthuswami Ayyar for Respondent.

R.M. — *Revision allowed.*

Venkatarama Ayyar, J. Subbaraj *v.* Muthia.
13th March, 1953. W.P. No. 881 of 1952.

Representation of the People Act (XLIII of 1951), section 85—Powers of Election Commission under—Provisions if mandatory—Election Tribunal—If subordinate to Election Commission—Civil Procedure Code (V of 1908)—Applicability—Powers of amendment to Tribunal.

On the true construction, section 85 of the Representation of the People Act does not make it imperative on the part of the Election Commission to dismiss an election petition for defective verification and secondly, whatever might be the powers of the Election Commission under section 85 when once the matter comes before the Tribunal, it is thereafter governed by section 90 (4) of the Act and under this section the Tribunal has a discretion in the matter of dismissing the petition for non-compliance with the requirements, of section 83.

The use of the word " shall " in section 85 is not conclusive and the intention of the Legislature must be gathered on a reading of the enactment as a whole. The fact that the Tribunal is given a discretion under section 90 (4) goes far to support the view that section 85 should not be construed as mandatory. The cumulative effect of the provision in section 85, proviso, section 83 (3) and section 90 (4) is to lead to the conclusion that the words " shall dismiss " in section 85 should be construed as meaning " shall have the power to dismiss ".

Under section 83 (1) which makes Order 6, Civil Procedure Code, applicable to election petitions, a defective verification is a mere irregularity and does not affect the jurisdiction.

Even assuming that the only jurisdiction of an Election Commission was to dismiss a petition under section 85 still when once the matter comes up before the Tribunal under section 86, thereafter the powers of the Election Tribunal are those which are conferred on it by the statute and such powers are not controlled by the limitations on the powers of the Election Commission under the Act. The Election Tribunal is in no sense a body subordinate to the Election Commission. Both are two independent bodies operating in the same field but at different stages and with different powers.

The question whether Order 6, rule 17, Civil Procedure Code, is as such applicable to proceedings before the Election Tribunal is not free from doubt. Section 83 (3) permits only amendment of particulars included in the list or the inclusion of better particulars in regard to any matters referred to in the list and that would seem to negative a general power of amendment which the civil courts possess under Order 6, rule 17, Civil Procedure Code. Every Tribunal has inherent jurisdiction to permit clerical and formal amendments.

K. V. Venkatasubramania Ayyar, K. V. Narayanaswami Ayyar and *R. Venkatachalam* for Appellant.

The Government Pleader (*P. Satyanarayana Raju*), *B. V. Subrahmanyam, V. V. Krishnamurthy, R. Chockalingam* and *M. S. Appa Rao* for Respondents.

R.M. — *Petition dismissed.*